

PLAOS, Jr

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 420

**SAMUEL SHEPHERD AND WALTER IRVIN,
PETITIONERS,**

vs.

STATE OF FLORIDA

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF FLORIDA**

PETITION FOR CERTIORARI FILED OCTOBER 2, 1950.

CERTIORARI GRANTED NOVEMBER 27, 1950.

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in Supreme Court of Florida	1	1
Caption (omitted in printing)	1	1
Record from Circuit Court, Fifth Judicial Circuit, Lake County, Florida	5	1
Minute entries:		
Order to make service of jury summons for Spe- cial Venire	5	1
Arraignment and pleas	9	1
Order appointing physicians to make physical examinations	10	2
Drawing of names of 150 persons to serve as jurors	11	3
Commencement of proceedings; motion for with- drawal of pleas, etc.	14	3
Drawing of names of 50 additional persons to serve as jurors	21	4
Indictment	29	5
Capias and return thereon (omitted in printing)	31	
Order to move prisoners to another jail	32	6

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Record from Circuit Court, Fifth Judicial Circuit, Lake County, Florida—Continued

	Original	Print
Order to release James Sheppard (omitted in printing)	34	
Order for physical examination of defendants (omitted in printing)	35	
Order to select additional jury list (omitted in printing)	37	
Transcript of proceedings at arraignment	38	7
Special rules of court	44	10
Motion for continuance	46	12
Motion to quash (omitted in printing)	54	
Motion to withdraw pleas of not guilty and set aside arraignment	57	18
Capias (Ernest R. Thomas) and return thereon	62	21
Motion to withdraw pleas, set aside arraignment and file motion to quash the indictment (omitted in printing)	63	
Affidavit of L. E. Thomas	68	22
Motions to quash the indictment (omitted in printing)	70	
Application for removal of cause	78	24
Amendment to the motion for continuance	91	34
Reply of State of Florida to motion for continuance	94	36
Reply to motion to withdraw pleas of not guilty and set aside arraignment	95	36
Answer to motion to quash indictment (omitted in printing)	99	
Answer to application for removal of cause	100	39
Answer to motion to withdraw pleas, set aside arraignment and file motion to quash (omitted in printing)	101	
Answer to amendment to motion for continuance	103	40
Motion for bill of particulars (omitted in printing)	104	
Bill of Particulars (omitted in printing)	106	
Amendment to application for removal of cause	109	40
Answer of the State to the amendment to application for removal of cause	115	42
Challenge to the Panel	116	43
Charges of the Court at trial (omitted in printing)	122	
Petition of Harry E. Gaylord, Atty., Re: compensation (omitted in printing)	133	
Order fixing compensation (omitted in printing)		
Motion for new trial	134	45
Judgment and sentence of Walter L. Irvin	138	47
Judgment and sentence of Samuel Sheppard	140	48
Commitment to State Prison (omitted in printing)	142	
Affidavit of insolvency of Walter L. Irvin (omitted in printing)	143	
Affidavit of insolvency of Samuel Sheppard (omitted in printing)	144	
Order denying motion for new trial	145	49

Records from Circuit Court, Fifth Judicial Circuit, Lake
County, Florida—Continued

	Original	Print
Order adjudicating defendants insolvent (omitted in printing)	147	
Order for witness, Delia Irvin (omitted in print- ing)	148	
Order for witness, Tom Greenlee (omitted in print- ing)	150	
Order to notify Tom Greenlee (omitted in print- ing)	152	
Verdict	155	50
Notice of appeal	154	50
Grounds of appeal	157	50
Order extending time (omitted in printing)	161	
Order for Clerk to deliver exhibits to Clerk of Su- preme Court, in person (omitted in printing)	162	
Order directing Clerk to prepare record (omitted in printing)	164	
List of exhibits (omitted in printing)	165	
Clerk's certificate (omitted in printing)	167	
Reporter's transcript of testimony and proceedings	169	54
Caption and appearances	169	54
Colloquy re motions for change of venue and con- tinuance, etc.	173	54
Testimony on motions:		
Charles Medlin	187	62
Harry E. Gaylord	214	80
Dr. Nelson W. V. Spaulding	222	87
Ormond Powers	224	88
Alex Akerman, Jr.	240	100
Mabel Norris Reese	241	101
James Herlong	250	108
W. V. Morrow	257	113
Willie Padgett	264	119
Richard T. Mullins	268	121
Jack Grant	276	127
Walter Irvin	290	136
Samuel Shepherd	291	138
G. G. Ware	301	142
Carlyle Rogers	308	147
Luther Miller	319	155
Mr. White	326	160
Irving Burley	334	162
F. L. Hampton	341	167
Mr. Prevatt	345	171
W. L. Story	351	175
Frank E. Owens	352	176
George J. Dykes	357	179
G. E. Fortland	362	182
W. V. McCall	363	185
R. G. Cassidy	372	189

Record from Circuit Court, Fifth Judicial Circuit, Lake
County, Florida—Continued

Reporter's transcript of testimony and proceedings—
Continued

Testimony on motions—Continued	Original	Print
R. E. Norris	375	191
R. G. Cassidy (recalled)	378	193
W. V. McCall (recalled)	382	196
Emmett B. Peter	392	202
Ruling on application for removal of cause	394	203
Ruling on motion for continuance	395	203
Renewal of motion for continuance and denial thereof	400	206
Qualification of jurors	402	207
Testimony and proceedings after acceptance of trial jury (omitted in printing)	644	
Reporter's transcript of testimony and proceedings on motion to withdraw pleas of not guilty and set aside arraignment	841	377
Testimony of Alex Akerman, Jr.	844	378
Franklin H. Williams	846	380
J. W. Hunter	858	389
Mrs. Florence Robertson	866	396
George J. Dykes	867	397
Lawrence E. Dugger	867	397
Ruling of the Court	870	399
Reporter's certificate (omitted in printing)	872	
Opinion; Chapman, J.	880	400
Judgment	891	408
Petition for rehearing (omitted in printing)	893	
Order denying petition for rehearing	897	409
Application for stay of execution (omitted in print- ing)	899	
Order staying execution (omitted in printing)	902	
Stipulation re exhibits (omitted in printing)	904	
Motion for, and order making petition for rehearing and order denying same a part of the record (omitted in printing)	906	
Directions for making transcript of record on appeal (omitted in printing)	910	
Additional directions for making transcript of record on appeal (omitted in printing)	913	
Clerk's certificate (omitted in printing)	914	
Order granting motion for leave to proceed in forma pauperis; granting petition for writ of certiorari and transferring case to appellate docket	915	409

[fols. 1-2]

[Caption omitted]

[fols. 3-8]

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND
FOR LAKE COUNTY**

THE STATE OF FLORIDA

VS.

SAMUEL SHEPPARD, WALTER L. IRVIN, CHARLIE GREENLEE and
ERNEST R. THOMAS

ORDER TO MAKE SERVICE OF JURY SUMMONS—July 19, 1949

Circuit Court convened in Special Session in the Court Room at 3:30 o'clock P. M. Tuesday, July 19, with Judge Futch presiding, and Jeff Wood, Court Reporter, State Attorney Hunter, Sheriff McCall, Deputy Sheriff Hatcher and Clerk Dyke present.

The Judge drew the names of 36 persons from the jury box to serve as jurors, the Special Venire being returnable at 5:00 o'clock P. M. Wednesday, July 20, 1949.

The Judge also issued the following Order, to-wit:

It Is Ordered that the Sheriff of Lake County, Florida make service of jury summons for the Special Venire returnable July 20th at 5:00 o'clock P. M. in person and not by registered mail.

Court then adjourned to 5:00 o'clock P. M. Wednesday, July 20, 1949.

T. G. Futch, Judge.

[fol. 9] **IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIR-
CUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY**

[Title omitted]

ARRAIGNMENT AND PLEAS—August 12, 1949

The above defendants, except Ernest R. Thomas who is now deceased, being arraigned in open Court, the Court appointed Harry E. Gaylord Attorney to defend them, and each of the defendants, Samuel Sheppard, Walter L. Irvin

and Charlie Greenlee, entered a plea of NOT GUILTY as charged in the Indictment which was read by State Attorney Hunter. Charlie Greenlee not being of age was attended by his father Tom Greenlee. Charlie Greenlee was asked his age by the State Attorney and stated he is 16 years old. Tom Greenlee being sworn by the Court stated the boy is 16. Samuel Sheppard being asked his age, stated he is 22 years old. Walter L. Irvin being asked his age, stated he is 22 years old.

Tom Greenlee being asked by State Attorney Hunter if he had an attorney to represent his boy, stated he had a letter from a lawyer named Fordham. State Attorney Hunter stated Attorney William A. Fordham of Tampa [fol. 10] had made it known to him that he will not represent Greenlee or any other of the defendants.

State Attorney Hunter asked the Judge to set this case for trial, whereupon, the Judge announed the case is set for trial beginning at 10:00 o'clock A. M. Monday, August 29, 1949.

Court then recessed from day to day.

T. G. Futch, Judge.

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

ORDER APPOINTING PHYSICIANS—August 12, 1949

Upon motion of the defendants for the appointment of competent physicians to make physical examination of each of the defendants, it is ordered that Dr. C. M. Tyre and Dr. H. G. Holland, reputable physicians of Lake County, Florida, be and they are hereby appointed to make a physical examination of each of the defendants and to make report of their findings in writing to this court.

It is further ordered that the said Dr. C. M. Tyre and Dr. H. G. Holland be paid for their services from appropriate funds, and that same be entered as cost in this proceeding.

Done and ordered at Tavares, Florida, this the 12th day of August, 1949.

T. G. Futch, Judge of Circuit Court.

[File endorsement omitted]

[fols. 11-13] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

DRAWING OF NAMES OF 150 PERSONS TO SERVE AS JURORS—
August 19, 1949

And now on this 19th day of August 1949 in open Court, the Judge of the Court, in the presence of the Clerk of the Circuit Court and the Sheriff, did with his own hands draw from the jury box the names of 150 persons to serve as jurors for the Spring Term of Circuit Court of Lake County, Florida, 1949.

T. G. Futch, Judge.

[fol. 14] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

COMMENCEMENT OF PROCEEDINGS; MOTION FOR WITHDRAWAL
OF PLEAS, ETC.—August 25, 1949

State Attorney Hunter announced he would like to have the proceedings in this case taken down by the Court Reporter, whereupon Court Reporter Wood was called into the Court room and instructed by the Clerk to take the proceedings.

State Attorney Hunter requested that W. B. Hunter, Attorney be sworn as an Assistant State Attorney, whereupon W. B. Hunter was sworn in by the Clerk as Assistant State Attorney.

Attorney Alex Akerman, Jr., appeared as counsel for the defendants, Samuel Sheppard, Walter L. Irvin and Charlie Greenlee, who were present. Attorney Akerman had as his associate Attorney Joseph E. Price. Attorney Akerman asked permission of the Court for Franklin H. Williams, a practicing attorney from New York, to be granted permission to sit in as an associate to him in this case, which request was granted by the Judge.

Attorney Akerman filed motion to withdraw the defendants plea of Not Guilty and set aside the arraignment. Motion read by Attorney Akerman.

State Attorney Hunter filed Reply to motion to withdraw plea of Not Guilty and set aside arraignment. Reply to Motion read by Attorney Hunter.

Attorney Akerman was sworn by the Court and testified for the defendants.

Attorney Williams was sworn by the Court and testified for the defendants.

Telegram from L. E. Thomas, Attorney of Miami, to Franklin H. Williams, Attorney of New York, was filed in evidence by Defendants' counsel and marked Defendants Exhibit No. 1.

State Attorney Hunter was sworn by the Court and testified for the State.

[fols. 15-20] State Attorney Hunter introduced and read transcript of record of the arraignment on August 12, 1949.

The following witnesses were sworn and testified for the State.

Mrs. Florence Robertson, Deputy Clerk, Mr. Geo. J. Dykes, Clerk Circuit Court, and Mr. Lawrence Dugger, an employee from State Prison at Raiford.

Motion of Attorney Akerman to Withdraw the defendants plea of Not Guilty and set aside the arraignment was denied.

Attorney Akerman filed motion to Quash.

The Judge announced that Mr. Harry E. Gaylord, Attorney, who had been appointed by the Court to represent the Defendants, asked permission on August 24th to withdraw as Attorney for the Defendants as other counsel had been employed by someone to represent the Defendants. This permission was granted by the Court.

Attorney Akerman filed Motion for Continuance, whereupon the Judge announced he would change the date of the trial from Monday, August 29th, to Thursday, September 1, 1949.

Court then recessed from day to day.

T. G. Futch, Judge.

[fols. 21-28] IN CIRCUIT COURT OF LAKE COUNTY

DRAWING OF NAMES OF 50 ADDITIONAL PERSONS TO SERVE AS JURORS—September 1, 1949

State Attorney Hunter stated he deemed it advisable that a Special Venire of 50 additional jurors be drawn. Whereupon, the Judge in open court in the presence of the Sheriff, the Clerk and other Court Officials drew from the

jury box a special venire of 50 additional names of persons for jury service returnable instant.

T. G. Futch, Judge.

[fol. 29] IN CIRCUIT COURT OF LAKE COUNTY

INDICTMENT—Filed July 20, 1949

In the Name and by the Authority of the State of Florida

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida, for Lake County, at the Spring Term thereof, in the year of our Lord, one thousand nine hundred and forty nine, Lake County to-wit: The Grand Jurors of the State of Florida, enquiring in and for the body of the County of Lake, upon their oaths do present that Samuel Sheppard and Walter L. Irvin and Charlie Greenlee and Ernest R. Thomas late of the County of Lake, aforesaid, in the Circuit and State aforesaid, laborers, on the 16th day of July in the year of our Lord, one thousand nine hundred and forty Nine, with force and arms at and in the County of Lake aforesaid, in and upon one, Norma Padgett, a female of the age of ten years or more, to-wit: Seventeen years, violently and feloniously and assault did make, and her the said Norma Padgett, then and there violently and by force and against her will feloniously did ravish and carnally know.

—against the form of the statute in such case made and provided to the evil example of all others in the like case offending, and against the peace and dignity of the State of Florida.

J. W. Hunter, State Attorney for the Fifth Judicial Circuit of the State of Florida Prosecuting for Said State.

[Endorsed on back:] In Circuit Court, Fifth Judicial Circuit of Florida, Lake County, Spring Term, A. D. 1949. The State of Florida vs. Samuel Sheppard: Walter L. Irvin: Charlie Greenlee and Ernest R. Thomas.

Indictment for Rape

A True Bill, Austin B. Merritt, Foreman of the Grand Jury. Presented by the Grand Jury in open court, and filed in open court this 20 day of July, A. D. 1949. George J. Dykes, Clerk. July 20, 1949. J. W. Hunter, State Attorney. (official seal)

[fols. 30-31]

State Witnesses

Norma Padgette
Willie Padgette
Curtis Howard
James L. Yates
LeRoy Campbell
Dr. G. H. Binneveld
C. S. Carrol, Patrolman
Sgt. Bill Norris
Harry McDonald
G. T. Bass
Ethel Thomas

Henry Singleton
Howard Crowell
Wesley W. Evans
James Sheppard
Lt. Angel
T. J. Beggs
Ruby Lee Thomas
Luther Thomas
Bill Pennington
Charlie Staats
Henry Sheppard

STATE OF FLORIDA,
County of Lake.

I, Geo. J. Dykes Clerk of the Circuit Court, in and for the said County, Do Hereby Certify the above to be a true and correct copy of the Endorsement and Indictment in the above stated cause. Witness my Hand and the Seal of said Court, this the 8th day of September, A. D. 1949.

Geo. J. Dykes, Clerk of the Circuit Court. [Official Seal]

[fols. 32-37] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

ORDER TO MOVE PRISONERS—July 16, 1949

Whereas it has been made to appear that it is necessary quickly to remove prisoners: Samuel Shepard and Walter L. Irvin, now in the Custody of the Sheriff of Lake County, Florida, from the Lake County Jail to another county for safe keeping, to prevent injury to said prisoners, and it is deemed inadvisable by reason of the circumstances to first

communicate with the Governor of the State of Florida; now, therefore, it is

Ordered and Directed that the Sheriff of Lake County, Florida, remove prisoners Samuel Shepard and Walter L. Irvin from the Jail in Lake County, Florida, to another county for safe keeping and to prevent injury to said prisoners.

Done and Ordered at Tavares, Lake County, Florida, this the 16th day of July, 1949.

T. G. Futch, Circuit Judge of the Fifth Judicial Circuit of Florida.

[fol. 38] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA

vs.

WALTER L. IRVIN, CHARLES GREENLEE, AND SAMUEL SHEPPARD

TRANSCRIPT OF PROCEEDINGS HAD AT ARRAIGNMENT OF THE DEFENDANTS—Filed August 15, 1949

At the arraignment of the defendants, Walter L. Irvin, Charles Greenlee and Samuel Sheppard, before Hon. Truman G. Futch, Judge of the above entitled court, in open court, at Tavares, Lake County, Florida, on the 12th day of August 1949, the following proceedings were had:

Appearances:

J. W. Hunter, State Attorney, representing the State,
Harry E. Gaylord, Representing the defendants.

Mr. Hunter. We are now ready for the arraignment of Samuel Sheppard, Walter L. Irvin and Charles Greenlee. Let the record show that Ernest R. Thomas is now deceased.

The Court. Let the record show that Mr. Harry E. Gaylord has been appointed by the court to defend these defendants.

Mr. Hunter. Will the defendants please stand.

Q. What is your name?

A. Walter L. Irvin.

Q. Are you represented by Mr. Gaylord as your attorney?

A. Yes, sir.

Q. What is your name?

A. Samuel Sheppard sir.

Q. Are you represented also by Mr. Gaylord?

A. Yes, sir.

[fol. 39] A. Yes, sir.

Q. What is your name?

A. Charles Greenlee.

Q. Are you also represented by Mr. Gaylord?

A. Yes, sir.

Q. What is your age Samuel Sheppard?

A. Twenty two years.

Q. What is your age Walter L. Irvin?

A. Twenty-two years.

Q. What is your age Charles Greenlee?

A. Sixteen years.

Q. Who is your father?

A. Tom Greenlee.

Mr. Hunter. If he is in the court room I would like to have him come down front.

Tom Greenlee came down front.

Mr. Hunter. Swear Tom Greenlee please sir.

Tom Greenlee sworn by the court.

Mr. Hunter. What is your name?

A. Tom Greenlee.

Q. Where do you live?

A. Santafe, Florida.

Q. Are you related to Charles Greenlee?

A. Yes, sir. He is my boy.

Q. He is your son?

A. Yes, sir.

Q. How old is he?

A. He was sixteen last June.

Q. Are you here on his behalf as his father?

A. Yes, sir.

Q. The court prior to coming into the court room appointed Harry E. Gaylord, a member of this bar, to represent your son, is that satisfactory to you?

[fol. 40] A. I got a letter from a lawyer saying he was going to defend the boy.

Q. Who was the lawyer?

A. Fordham.

Mr. Hunter. Let the record show that William A. Fordham of Tampa has made it known to the State Attorney that he will not represent Charles Greenlee, or any of the defendants; that he is not in the case at present, and then the court appointed Mr. Gaylord, is that satisfactory to you? You can hire anybody else later if you want to.

A. I haven't made any arrangements for a lawyer for the boy. I didn't know any.

Q. You can make any arrangement before the trial that you want to. What I am asking you now is it satisfactory that Mr. Gaylord represent you- boy simply for this arraignment. I will read the indictment and ask them whether they are guilty or not guilty?

A. Yes, sir, it will be alright.

Mr. Hunter. Mr. Gaylord are you ready for the arraignment?

Mr. Gaylord. Yes, sir, I am ready for the arraignment. Indictment read to the defendants.

Mr. Hunter. What do you say Walter L. Irvin, guilty or not guilty?

Walter L. Irvin. Not guilty.

Q. What do you say Charles Greenlee, guilty or not guilty?

Charles Greenlee. Not guilty.

Q. What do you say Samuel Sheppard, guilty or not guilty?

Samuel Sheppard. Not guilty.

[fol. 41] Mr. Hunter. The defendants being arraigned in open court each enters a plea of not guilty.

Mr. Hunter. I would like to ask that the court set this case for trial, and I can say in behalf of the State that we will be ready by the 29th day of August 1949.

The Court. Is that alright with you Mr. Gaylord?

A. Yes, sir.

The Court. The case is set for trial beginning at ten o'clock A. M. August 29, 1949.

The Court. Is there anything further at the present time?

Mr. Hunter. Nothing further at the present time.

Mr. Hunter. I would like to say that the State will summon any witnesses that counsel for the defendants wish served, by simply giving us the names of the witnesses.

The Court. Give Mr. Gaylord the names of any witnesses you want and the State will have them summoned and have them here on the day of the trial. Give the list of witnesses to Mr. Gaylord so he can present it to the State Attorney. At the request of the State Attorney I ask those persons present in the court room to please retire in an orderly manner before the defendants are taken out by the sheriff and his deputies.

Mr. Gaylord. The defendants desire to have a physical examination by doctors to be appointed by the court of each of the defendants.

Mr. Hunter. The State will not oppose the motion. We sanction it, and join counsel for defendants in making it.

The Court. The motion is granted and I will appoint Dr. C. M. Tyre and Dr. S. C. Colley.

[fol. 42-43] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 44] IN CIRCUIT COURT OF LAKE COUNTY.

SPECIAL RULES OF COURT—Filed Aug. 23, 1949

I have every confidence that the citizens of Lake County will lend their aid and assistance to orderly and legal procedure to the end that complete justice may be accomplished in the trial set for August 29th in Tavares, Therefore the special rules promulgated for this trial are not to be taken or considered as any indication of fear or lack of confidence. The rules are promulgated as a precaution against the possibility of some agitator or agent being sent in to purposely start trouble to the end that the critics of the south might have something to base criticism upon.

I am, therefore, calling upon all citizens and residents of Lake County, and of Florida, to lend every assistance to the officers of this Court in maintaining order and decorum throughout Lake County during the course of this trial.

For all sessions of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Lake

County, to be held during the week beginning August 29, 1949, the following rules will be in force and effect:

1. Only such number of visitors will be allowed to enter the court room as can be seated by the regular seating accommodations of the court room, and no one will be allowed to stand while Court is in session, except the officers of the Court and those engaged in the trial.

2. No one will be allowed to stand or loiter in the hallways outside the court room on the third floor of the court house while Court is in session or during the time thirty minutes before Court convenes and thirty minutes after Court recesses or adjourns.

3. No one will be allowed to stand, sit or loiter on the stair steps of the court house above the second floor.

4. The elevator will be closed to all except officers of the Court, or individuals to whom the Sheriff may give special permission because of age or physical infirmity, or who may be by him permitted to visit the jail quarters on the fourth floor.

5. Each person desiring to go to the court room floor [fol. 45] will be required to submit to search by the Sheriff or his deputies for weapons.

6. No person will be permitted to take any valise, satchel, bag, basket, bottle, jar, jug, bucket, package, bundle, or other such item to the third floor of the court house.

7. All crutches, canes, walking sticks, and other aids to locomotion shall be carefully inspected by the Sheriff or his deputies, and unless necessary for the individual as an aid to walking shall not be allowed above the second floor of the court house.

8. No demonstration of any nature, handclapping or otherwise, will be permitted at any time while Court is in session.

9. The Sheriff will permit entry to the court room by the general public by only two doors, at each of which he will place a deputy or bailiff at all times while Court is in session.

10. No one, other than officers of the Court, jurors, the defendants, members of the bar, witnesses and the press, exclusive of photographers, shall be allowed inside the railing.

11. No pictures or photographs shall be made, exposed or taken inside the court room, and no one will be allowed to

take any photographic or picture making devise inside the court room.

12. The Sheriff of Lake County, Florida, is charged with the duty of enforcing these rules and to that end he is authorized to employ such number of deputies as may be necessary at the expense of Lake County, Florida, as part of the costs of the trial to be conducted during the time covered by these rules.

Done and ordered at Tavares, Florida, this the 23rd day of August 1949.

T. G. Futch, Circuit Judge

[fol. 46] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR THE COUNTY OF LAKE

[Title omitted]

MOTION FOR CONTINUANCE—Filed August 25, 1949

Come now the defendants, Charles Greenlee, Samuel Sheppard and Walter Irvin, by their undersigned counsel and file, this, their motion for continuance, hereby expressly reserving the right to file such other motions or pleas as they may lawfully have and for grounds for said motion state:

I

That the above named defendants, Charles Greenlee, Samuel Sheppard and Walter Irvin were taken in custody by the Sheriff of Lake County on the 16th day of July, A. D., 1949. That, shortly thereafter, they were removed from the county jail at Tavares, Lake County, and transported to the State Prison at Raiford, because of the general state of excitement, prejudice, mob violence and lawlessness then existing in and throughout the County of Lake, caused and created by an attitude or prejudice directed at and towards your defendants and because of the fear that your defendants would be subject to physical harm and violence by lawless persons.

II

That, thereafter, on or about the 31st day of July, A. D., 1949, they did request, Franklin H. Williams, a member

[fol. 47] of the Bar of the State of New York, to obtain for them, a competent and qualified member of the Bar of the State of Florida to take every legal step necessary and proper in their defense to whatever charge upon which they were then being held in custody.

III

That the said Franklin H. Williams did inform your defendants that he would immediately make every effort to obtain such a qualified member of the Bar of the State of Florida as requested by them to carry out their wishes in the premises and that he did immediately, thereafter, make constant and diligent effort to obtain a qualified defense counsel for your defendants. That the said Franklin H. Williams contacted numerous members of the Bar of the State of Florida but was unable to retain any one of them for the purpose of conducting the defense of your defendants until the night of the 22nd day of August, A. D., 1949, at which time, Alex Akerman, Jr., agreed to act in the capacity of defense counsel and was retained by your defendants.

IV

That in the short time between the employment of defense counsel and the date set for the trial of their cases, their defense counsel will not be able to properly prepare their defense and will thus be prevented from exercising his full competency in such capacity and your defendants thereby will be deprived of life or liberty without due process of law and denied the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the U. S. Constitution, the Constitution and Laws of the State of Florida.

[fol. 48]

V

That at the time that the grand jury, which found and returned the indictment against your defendants herein, was impanelled and summoned, lawless mobs were roaming throughout the County of Lake determined to seek and find your defendants and to then inflict grievous bodily injury upon them and to deny them, life and liberty without due process of law; and that at the time said grand jury was summoned and impanelled and prior thereto, a state of hysteria, prejudice and ill-feeling was rampant

throughout the County and among a large body of citizens thereof, directed against your defendants and other members of the Negro race; and that homes and property belonging to members of the Negro race were burned, destroyed and damaged by armed, lawless mobs; that local and county law enforcement officials were unable to cope with this situation, requiring, therefore, that the State Militia be called out and stationed at various points throughout the County of Lake to defend the lives and property of Negro citizens of Lake County; that at the time said grand jury was summoned and impanelled the newspapers which were widely distributed, disseminated and read throughout said County contained cartoons and editorials, calling for and demanding that the extreme penalty of death be levelled against your defendants thereby creating in the minds of the readers of such publications prejudiced, biased and pre-conceived notions of the innocence or guilt of your defendants of the crime for which they were subsequently indicted by the grand jury which was at that time summoned and impanelled. That in view of these facts and circumstances, your defendants' counsel, in the exercise of his full competency and in order to fulfill his obligations and duties as an officer of this Court and as a member of the Bar of the State of Florida, may desire and conclude, after a careful investigation and consideration of these facts and circumstances, that a Motion to Quash the indictment herein is necessary and proper; and that unless sufficient and reasonable time for such investigation and consideration is granted to the said defense counsel by this Court your defendants will be denied [fol. 49] rights guaranteed them by the Fourteenth Amendment to the U. S. Constitution, the Constitution and Laws of the State of Florida.

VI

That your defendants were indicted by the grand jury of the County of Lake, Florida, in which County, upon information and belief, no member of your defendants race, namely, the Colored or Negro race has ever served upon a grand jury of such County with the exception of one Negro, a County employee, who served on the grand jury which returned the indictment herein; that in said County a large proportion of the citizens thereof who qualified for such grand jury service are members of the Colored or Negro race; that your defendants' counsel desires and

needs a sufficient and reasonable time to investigate and ascertain whether there has been a systematic exclusion of Negroes from grand jury service in such County in violation of rights guaranteed to your defendants by the U. S. Constitution; and that the denial of such opportunity will violate rights guaranteed them by the Fourteenth Amendment to the U. S. Constitution, the Constitution and Laws of the State of Florida.

VII

That your defendants' counsel has not as yet been furnished with a copy of the indictment herein and has not had the opportunity to investigate the summoning, impanelling, qualifications or disqualifications of said grand jurors and thus does not know whether the indictment herein is valid and unless given a reasonable opportunity to investigate, your defendants may be deprived of life or liberty without due process of law and denied the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the U. S. Constitution, the Constitution and Laws of the State of Florida.

[fol. 50],

VIII

That your defendants are informed and do believe that an investigation will reveal that they have legal grounds for a change of venue in these cases, and that a change of venue is necessary if they are to receive a fair and impartial trial, and they do desire a change of venue in this case, but their defense counsel has not had sufficient time to properly investigate the facts and prepare a Motion for change of venue and obtain the necessary affidavits therefor and that unless your defendants' counsel is given a reasonable time to investigate the facts and prepare said Motion, your defendants will be deprived of life or liberty without due process of law and denied the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the Constitution of the United States, the Constitution and Laws of the State of Florida.

IX

That your defendants are held in custody in the State Prison at Raiford and that their only opportunity to contact parties who may be material witnesses for their

defense is through their counsel and that because of the mob violence hereinabove set out many of these parties have been driven out of their homes in Groveland in the County of Lake to distant points in Florida and have been warned not to return to Groveland which makes it extremely difficult for your defense counsel to confer with these parties and to ascertain whether they are material witnesses, and if so, to procure their attendance at the trial; and that unless given a reasonable and sufficient time in which to contact and interview said prospective witnesses your defendants will thus be denied the right of proper preparation for their defense and thus be denied rights guaranteed to them by the Constitution of the United States, the Constitution and Laws of the State of Florida.

[fol. 51]

X

That your defendants are now incarcerated in the State Prison at Raiford, a distance of more than one hundred miles from Lake County, Florida, and more than one hundred miles from the office of their defense counsel which makes it extremely inconvenient and impractical for your defendants to confer with their counsel, thus, denying unto your defendants the right of proper preparation for their defense, a fundamental right guaranteed them by the Constitution of the United States and the Constitution of the State of Florida.

XI

That shortly after their arrest, a mob of several hundred persons gathered around the jail in Tavares where your defendants had been incarcerated demanding that defendants be turned over to them and that upon learning that defendants were no longer in said jail, said mob did seek its vengeance by destroying and damaging the residence of the family of one of your defendants and destroying and damaging the property of other members of your defendants race and generally intimidating and terrorizing all of the citizens of the Negro race in and around the town of Groveland and other communities in Lake County; that it was necessary for the State Militia to be called out and it was necessary for your defendants to be removed to the State Prison under heavy guard where they have remained since, with the exception of the short period of time

when they were brought back for the arraignment; that the great public indignation and hostility was aroused not only against your defendants, but against many members of their race, which indignation continues up to the date of this Motion; that widespread newspaper publicity has been given and your defendants have been warned through the editorial column of at least one of the newspapers, which is widely read throughout Lake County, that if their attorneys attempt to diligently defend them, that mob violence may occur and other inflammatory newspaper articles and cartoons have been published and disseminated [fol. 52] throughout Lake County; that because of the above facts, it was practically impossible for your defendants to obtain counsel to defend them and counsel was only obtained after diligent efforts made over a period of one month; that, as shown above, a situation now exists in the County of Lake which makes it practically and psychologically impossible to secure a fair and impartial trial in the County of Lake at the present time and unless the trial in this case is postponed, your defendants will not receive a fair and impartial trial and will be denied of fundamental rights guaranteed them by the Constitution of the United States of America and the Constitution of the State of Florida.

XII

That your defendants are charged with the crime of rape, a capital offense under the laws of the State of Florida; that due to the serious and heinous nature of this charge a proper defense demands unusual diligence and the careful exploration of every avenue and byway of the law and facts; that the failure of this Court to grant a reasonable and sufficient time for this purpose will deny to your defendants rights guaranteed them by the Constitution of the United States and of the State of Florida.

Wherefore, because of the above stated grounds and each of them, defendants pray that this Court will postpone the trial in this cause until such time as is reasonable for their defense counsel to thoroughly and properly prepare their defense and until such time as they can receive a fair and impartial trial.

Alex Akerman, Jr., Attorney for Defendants.

I, Alex Akerman, Jr., do hereby certify that I am the counsel for the defendants in the above cause and that the above and foregoing Motion is made in good faith.

Alex Akerman, Jr.

[fols. 53-56] *Duly sworn to by Alex Akerman, Jr. Jurat omitted in printing.*

[fol. 57] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR THE COUNTY OF LAKE

[Title omitted]

MOTION TO WITHDRAW PLEAS OF NOT GUILTY AND SET ASIDE
ARRAIGNMENT—Filed August 25, 1949

Come now the defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin, by their attorney undersigned and respectfully move the Court for permission to withdraw their Pleas of Not Guilty entered on the 12th day of August, A. D., 1949, and to set aside the arraignment held at the time of the entry of said Pleas and as grounds for said Motion state:

I

That the above named defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin were taken in custody by the Sheriff of Lake County on the 16th day of July, A. D., 1949. That, shortly thereafter, they were removed from the county jail at Tavares, Lake County, and transported to the State Prison at Raiford, because of the general state of excitement, prejudice, mob violence and lawlessness then existing in and throughout the County of Lake, caused and created by an attitude of prejudice directed at and towards your defendants and because of the fear that your defendants would be subject to physical harm and violence by lawless persons.

II

That, thereafter, on or about the 31st day of July, A. D., 1949, they did request, Franklin H. Williams, a member of [fol. 58] the Bar of the State of New York, to obtain for them, a competent and qualified member of the Bar of the State of Florida to take every legal step necessary and

proper in their defense to whatever charge upon which they were then being held in custody.

III

That the said Franklin H. Williams did inform your defendants that he would immediately make every effort to obtain such a qualified member of the Bar of the State of Florida as requested by them to carry out their wishes in the premises and that he did immediately, thereafter, make constant and diligent effort to obtain a qualified defense counsel for your defendants. That the said Franklin H. Williams contacted numerous members of the Bar of the State of Florida but was unable to retain any one of them for the purpose of conducting the defense of your defendants until the night of the 22nd day of August, A. D., 1949, at which time, Alex Akerman, Jr., agreed to act in the capacity of defense counsel and was retained by your defendants.

IV

That prior thereto, and on or about the 11th day of August, A. D., 1949, the State's Attorney, J. W. Hunter, was informed of the efforts then being exerted by the said Franklin H. Williams to obtain and retain for your defendants qualified defense counsel. That the said State's Attorney was requested to postpone the arraignment of your defendants until such time as competent counsel was retained.

V

That on the 12th day of August, A. D., 1949, your defendants were arraigned before the Judge of the Circuit Court and at such arraignment were represented by one Harry Gaylord, Esq., a member of the Bar of the State of Florida, appointed by the said Court to represent the above defendants at said arraignment.

[fol. 59]

VI

That your defendants have been informed, that at such time, the said Harry Gaylord, Esq., who has now withdrawn as counsel, was assured by the above mentioned State's Attorney and the above mentioned Judge of the said Circuit Court, that the entering of a plea to the indictment at said arraignment would not waive any rights of which they

were possessed prior to such arraignment and that upon obtaining and retaining defense counsel they would then have the right to withdraw their plea and file and enter any plea or motion with the same force and effect as if said motion or plea had been filed prior to said arraignment.

VII

That their defense counsel, Alex Akerman, Jr., has not had sufficient or reasonable time to investigate the conditions and circumstances surrounding the arrest and detention of your defendants, the impanelling of the grand jury and the return of the indictment herein and the other steps and proceedings had in this cause to date and was not present at the arraignment and did not represent your defendants at the time thereof, and has not been furnished a copy of the indictment.

VIII

That your defendants have been advised that during all of the proceedings had in this cause they were guaranteed equal protection of the laws and due process of law by the Fourteenth Amendment to the U. S. Constitution and by the Constitution of the State of Florida.

IX

That your defendants and their counsel have grave and serious doubts as to the legality of the indictment and other proceedings had and taken in this cause from the time of their original detention to date and they believe that if their counsel is given a sufficient and reasonable time to [fol. 60] investigate these matters, that it will appear, that the rights guaranteed them by the Fourteenth Amendment to the U. S. Constitution, the Constitution and Laws of the State of Florida, have been violated.

X

That your defendants have been advised and verily believe that unless a reasonable and sufficient time is given for their said counsel to thoroughly and properly investigate the facts and circumstances surrounding the various steps and proceedings had in this cause that he, the said Alex Akerman, Jr., by virtue of such denial will be prevented and precluded from exercising his full competency as their defense

counsel and that your defendants will thereby be deprived of life or liberty without due process of law and denied the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the U. S. Constitution and the Constitution of the State of Florida.

Wherefore, your defendants pray that this Court will grant them permission to withdraw the Pleas of Not Guilty entered on the 12th day of August, A. D., 1949 and set aside the arraignment held at the time of the entry of said Pleas and will postpone further arraignment in this cause until such time as is reasonable for the defense counsel to thoroughly and properly investigate all the proceedings in this matter and to advise them as to what steps are necessary and proper to be taken by them prior to the arraignment.

Alex Akerman, Jr., Attorney for Defendants, 401
First National Bank Building, Orlando, Florida.

[fol. 61] *Duly sworn to by Alex Akerman, Jr. Jurat omitted in printing.*

[fols. 62-67] IN CIRCUIT COURT OF LAKE COUNTY

CAPIAS—Filed August 26, 1949

THE STATE OF FLORIDA

To All and Singular the Sheriffs of the State of Florida—
Greeting:

You are Hereby Commanded to take Ernest R. Thomas if he be found in your County, and him safely keep so that you have his body before the Judge of our Circuit Court of the Fifth Judicial Circuit of the State of Florida, at the Court House in Tavares, to answer unto the State of Florida on an indictment found against him by the Grand Jurors for the County of Lake, for Rape And have you then and there this Writ.

Witness Geo. J. Dykes, Clerk of our said Court, and the Seal of our said Court at the Court House at Tavares, aforesaid, on this the 20th day of July, A. D. 1949.
(Official Seal.)

Geo. J. Dykes, Clerk. By Florence Robertson, D. C.

Received this writ on the 25th day of July, 1949, and did not execute same as during the attempt, the within named, Ernest J. Thomas, was killed for resisting arrest, in Madison County, Florida.

This the 29th day of July, 1949.

(Signed) Simmie H. Moore, Sheriff, Madison County.
By Louise Wycks, D. S.

[File endorsement omitted.]

[fol. 68] IN CIRCUIT COURT OF LAKE COUNTY

AFFIDAVIT OF L. E. THOMAS, IN RE: STATE OF FLORIDA V.
SHEPHERD, ET AL.

STATE OF FLORIDA,
County of Dade, ss.:

Personally appeared before me an officer duly authorized to administer oaths and take acknowledgments, L. E. Thomas, who on oath says: That he is a licensed practicing attorney with offices at 1035 N. W. Second Avenue, Miami, Florida, and has so been licensed and practicing at the above address for the past 13 years immediately prior to making this affidavit.

That on Monday August 8, 1949, he received a long distance telephone call from Mr. J. W. Hunter, State Attorney at Tavares, Florida, at which time Mr. Hunter inquired whether affiant represented the defendants in the case of—State of Florida vs. Shepherd, et Al; said state attorney further stated that he wished to arraign said defendants during that week and that he had been advised affiant had made some inquiries about the case and wished to know affiant's status in connection therewith. That affiant stated he was not retained to represent said defendants, had not planned to be present at arraignment, but that he was employed by a national organization to make a preliminary investigation and forward information as to the nature of the indictment, time of arraignment and the like; that said state attorney advised affiant that he would ask for arraignment not later than Friday of that week. Affiant stated to said state attorney that he would let him know

not later than Thursday August 11, 1949, whether affiant would be engaged in defense of said defendants. Affiant says that about 12 noon on the 11th day of August 1949, he placed a long distance telephone call from his office to State Attorney J. W. Hunter, Tavares, Florida, and after having Tavares local operator try phone numbers—82, 19, and 43, he did succeed in contacting said state attorney at his offices under one of these telephone numbers. That affiant advised Mr. Hunter that affiant would not engage in the defense, that he was not retained to represent said defendants; affiant further stated that he had been authorized to [fol. 69] request arraignment be postponed a week or ten days in order to enable persons interested to complete their plans for employing defense counsel; that said state attorney again said to affiant over said long distance telephone that he would not postpone the arraignment for such a period of time, that he would request the court to arraign said defendants that week not later than Friday August 12, 1949; that said state attorney further said that if no counsel had been retained by the time of arraignment the court would appoint counsel and any attorney employed by the defendants or on their behalf subsequent to arraignment could, of course, come into the case and the appointed counsel could retire; that in the event other counsel were employed after the arraignment, he, the said state attorney, would waive any and all right to object to any motion made to quash the indictment or any other motion that should have or could have been made prior to arraignment. That affiant did then and there and that time forward to Attorney Franklin H. Williams, 20 West, 40th Street, New York 18, New York, for the benefit of the National Association for the Advancement of Colored People, the following telegram:

"Personal Health Will Not Permit My Engagement in Rigorous Trial Unless Other Counsel Unavailable (Stop) Prosecutor Declines Arraignment Delay but Will Thereafter Waive Right Against Motions On Indictment (Stop) Court in Session Counsel Will Be Appointed Temporarily Trial Date 7 to 10 Days Away. Prosecutor Awaiting Information on Counsel."

That the statements here made with respect to telephone conversation August 11, 1949, are in accordance with affi-

ant's memory and pencil memorandum made by him during the course of conversation.

Further Affiant Sayeth Not.

L. E. Thomas.

[fols. 70-77] Sworn to and subscribed before me at Miami, Florida, this the 26th day of August A. D. 1949, at Miami, Dade County, Florida.

E. B. Brooks, Notary Public State of Florida at
Large: [Notarial Seal.]

[fol. 78] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR THE COUNTY OF LAKE

[Title omitted]

APPLICATION FOR REMOVAL OF CAUSE—Filed August 29, 1949

Come now the defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin, by their attorney undersigned, and file this, their Motion for Removal of the Cause from the Circuit Court of the Fifth Judicial Circuit in and for the County of Lake, Florida, and respectfully show unto the Court:

I

That the above named defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin were taken in custody by the Sheriff of Lake County on the 16th day of July, A. D., 1949. That, shortly thereafter, they were removed from the County jail at Tavares, Lake County, and transported to the State Prison at Raiford, because of the general state of excitement, prejudice, mob violence and lawlessness then existing in and throughout the County of Lake, caused and created by an attitude of prejudice directed at and towards your defendants and because of the fear that your defendants would be subject to physical harm and violence by lawless persons.

II

That, thereafter, on or about the 31st day of July, A. D., 1949, they did request, Franklin H. Williams, a member of the Bar of the State of New York, to obtain for them, a competent and qualified member of the Bar of the State of

[fol. 79] Florida to take every legal step necessary and proper in their defense to whatever charge upon which they were then being held in custody.

III

That the said Franklin H. Williams did inform your defendants that he would immediately make every effort to obtain such a qualified member of the Bar of the State of Florida as requested by them to carry out their wishes in the premises and that he did immediately, thereafter, make a constant and diligent effort to obtain a qualified defense counsel for your defendants. That the said Franklin H. Williams contacted numerous members of the Bar of the State of Florida but was unable to retain any one of them for the purpose of conducting the defense of your defendants until the night of the 22nd day of August, A. D., 1949, at which time, Alex Akerman, Jr., agreed to act in the capacity of defense counsel and was retained by your defendants.

IV

That since your defendants' counsel has been retained he has had to appear before this Court in numerous hearings and has had to prepare numerous pleadings and it was necessary to investigate in connection with the preparation for this Motion and that this is the earliest opportunity your defendants have had to prepare and file this Motion for Removal of the Cause.

V

That your defendants have made diligent effort to obtain affidavits in support of this Motion but because of the feeling of ill will and prejudice toward your defendants and hostile public sentiment on the part of a great number of citizens of Lake County and because other citizens, although they believed your defendants could not receive a fair and impartial trial in Lake County, Florida, feared for their own safety if they made such affidavits, and because of the lack of time, your defendants have only been able to obtain such affidavits as are attached hereto.

[fol. 80]

VI

That shortly after their arrest, a mob of several hundred persons gathered around the jail at Tavares where your

defendants have been incarcerated, demanding that defendants be turned over to them and that upon learning that your defendants were no longer in said jail, said mob did seek its vengeance by destroying and damaging the residence of the family of one of your defendants and destroying and damaging the property of other members of your defendants race and generally intimidating and terrorizing all of the citizens of the Negro race in and around the town of Groveland and other communities in Lake County; that it was necessary for the State Militia to be called out and it was necessary for your defendants to be removed to the State Prison under heavy guard where they have remained until the arraignment; that the great public indignation and hostility was aroused not only against your defendants, but against many members of their race; which indignation continues up to the date of this Motion; that widespread newspaper publicity has been given and your defendants have been warned through the editorial column of at least one of the newspapers, which is widely read throughout Lake County, that if their attorneys attempt to diligently defend them, that mob violence may occur and other inflammatory newspaper articles and cartoons have been published and disseminated throughout Lake County, copies of some of said newspaper stories are hereto attached and marked exhibits number one to twenty and made a part of this Motion; that because of the above facts, it was practically impossible for your defendants to obtain counsel to defend them and counsel was only obtained after diligent efforts made over a period of one month; that, as shown above, a situation now exists in the County of Lake which makes it practically and psychologically impossible to secure a fair and impartial trial in the County of Lake and unless the cause is removed from Lake County, Florida your defendants will not receive a fair and impartial trial and will be denied fundamental rights guaranteed them by the Constitution of the United States of [fol. 81] America and the Constitution of the State of Florida.

VII

That your defendants believe that if they are brought to trial in Lake County, Florida, lawless and threatening mobs will be in and around the court house evincing a hostile and threatening attitude toward your defendants, their coun-

sel and their witnesses and because of said mobs and crowds your defendants and their attorney will not be able to properly present their defense and that the jury will not be able to calmly and deliberately consider their case.

VIII

That rumor is prevalent in Lake County, Florida and articles have appeared in newspapers and have been disseminated throughout Lake County, Florida to the effect that unless your defendants are found guilty at their trial, mobs will take the law into their own hands and lynch your defendants.

IX

That the prejudice and ill-feeling on the part of a great number of the citizens of Lake County toward your defendants is so great that it has been necessary for this Court to adopt and post rules for their intended trial, a copy of said rules so posted is hereto attached, marked Exhibit XXI, and made a part of this Motion.

X

That on account of the ill-feeling and prejudice on the part of a great number of the citizens of Lake County and because your applicants are so odious to the inhabitants of Lake County, your defendants fear that if compelled to stand trial in Lake County, take the stand and testify in their own behalf that grievous bodily harm may be inflicted upon them or they may be lynched.

XI

That directly after their arrest your defendants were brutally beaten and abused by persons purporting to be law enforcement officials of Lake County, Florida and that [fol. 82] they are now in the custody of the law enforcement officials of the County of Lake and if compelled to stand trial in Lake County, Florida, they will be in custody of the said law enforcement officials; that, because of said beatings and other intimidations, they are in great fear of said law enforcement officials and fear for their safety if they are to be compelled to stand trial in Lake County, Florida.

XII

That after a hearing on the pleadings in this cause held on the 25th day of August, A. D., 1949, your defendants were again questioned by law enforcement officials of the County of Lake, Florida, in whose custody your defendants are, and said law enforcement officials did ask "What are those nigger lawyers putting you up to now" and were informed by said law enforcement officials that their "nigger" lawyers better watch their step or they would be in jail along with them and that your defendants did believe that if compelled to stand trial in Lake County, Florida, their counsel will not be able to properly defend them because, not only of intimidation by the public generally, but because of the fear and intimidation on the part of law enforcement officials of Lake County, Florida.

XIII

That the Mother and Father and other members of the family of Samuel Shepherd are material witnesses for your defendants; that, directly after the occurrence of the crime for which these defendants are charged a lawless and threatening mob went into the home of the defendant, Samuel Shepherd, which was also the home of his Mother and Father and burned said home to the ground; that the Mother and Father and other members of the family of Samuel Shepherd were forced to flee from Lake County, Florida for their safety and were told that if they returned to Lake County, Florida they would be lynched; that the Mother, Father and other members of the family of Walter Irvin are material witnesses for your defendants and the [fol. 83] Mother, Father and other members of the family of Walter Irvin were forced to flee from Lake County, Florida for their safety and were told that if they returned to Lake County, Florida, they would be lynched; that the presence of these witnesses is necessary for the proper defense of your defendants; that your defendants fear for the life and safety of their parents and other members of their family if they are compelled to come into Lake County, Florida and testify in their behalf; and that, even though proper protection be taken for their safety, because of the experience they have suffered at the hands of mobs of Lake County, Florida, the mere return to Lake County, Florida

will so terrify them that they will not have control of their mental faculties and be able to testify in this cause.

XIV

That because of the above grounds and each of them, if your defendants are compelled to stand trial in Lake County, Florida, they will thereby be deprived of life or liberty without due process of law and denied the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the U. S. Constitution and the Constitution and Laws of the State of Florida.

Wherefore, because of the above stated grounds and each of them, the defendants pray that this Court will enter an Order removing this cause from the Circuit Court of the Fifth Judicial Circuit in and for the County of Lake, Florida.

Alex Akerman, Jr. Attorney for Defendants.

I, Alex Akerman, Jr., do hereby certify that I am the counsel for the defendants in the above cause and that the above and foregoing application is made in good faith.

Alex Akerman, Jr.

[fols. 84-85] *Duly sworn to by defendants. Jurat omitted in printing.*

[fol. 86] Here follows clippings from certain newspapers which are attached to the Motion, "Application for Removal of Cause", and are marked: Exhibits numbers I to XX inclusive and made a part of said Motion:

- I—From The Sunday Sentinel Star dated July 17, 1949.
- II—From Orlando Morning Sentinel dated July 18, 1949.
- III—From Orlando Evening Star dated July 18, 1949.
- IV—From Orlando Evening Star dated July 18, 1949.
- V—From Orlando Morning Sentinel dated July 19, 1949.
- VI—From Orlando Evening Star dated July 19, 1949.
- VII—From Orlando Evening Star dated July 19, 1949.
- VIII—From Orlando Evening Star dated July 19, 1949.
- IX—From Orlando Evening Star dated July 19, 1949.
- X—From Orlando Morning Sentinel dated July 20, 1949.
- XI—From Orlando Evening Star dated July 20, 1949.
- XII—From Orlando Evening Star dated July 20, 1949.

XIII—From Orlando Sentinel dated July 21, 1949.

XIV—From The Groveland Press dated July 22, 1949.

XV—From Orlando Morning Sentinel dated July 22, 1949.

XVI—From Orlando Evening Star dated July 22, 1949.

XVII—From Orlando Evening Star dated July 23, 1949.

XVIII—From The Clermont and South Lake Press dated July 28, 1949.

XIX—From The Clermont and South Lake Press dated August 25, 1949.

XX—From Clermont and Groveland News Topic dated August 25, 1949.

The said Application for removal of cause with the exhibits numbers I to XX attached thereto is filed with defendants' exhibits.

XXI

SPECIAL RULES FOR CIRCUIT COURT IN AND FOR LAKE COUNTY, FLORIDA

For all sessions of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Lake County, to be held during the week beginning August 29, 1949, the following rules will be in force and effect:

1. Only such number of visitors will be allowed to enter the Court room as can be seated by the regular seating accommodations of the court room, and no one will be allowed to stand while Court is in session, except the officers of the Court and those engaged in the trial.

[fol. 87] 2. No one will be allowed to stand or loiter in the hallways outside the court room on the third floor of the court house while Court is in session or during the time thirty minutes before Court convenes and thirty minutes after Court recesses or adjourns.

3. No one will be allowed to stand, sit or loiter on the stair steps of the court house above the second floor.

4. The elevator will be closed to all except officers of the Court, or individuals to whom the Sheriff may give special permission because of age or physical infirmity, or who may be by him permitted to visit the jail quarters on the fourth floor.

5. Each person desiring to go to the court room floor will be required to submit to search by the Sheriff or his deputies for weapons.

6. No person will be permitted to take any valise, satchel, bag, basket, bottle, jar, jug, bucket, package, bundle, or other such item to the third floor of the court house.

7. All crutches, canes, walking sticks, and other aids to locomotion shall be carefully inspected by the Sheriff or his deputies, and unless necessary for the individual as an aid to walking shall not be allowed above the second floor of the court house.

8. No demonstration of any nature, handclapping or otherwise, will be permitted at any time while Court is in session.

9. The Sheriff will permit entry to the court room by the general public by only two doors, at each of which he will place a deputy or bailiff at all times while Court is in session.

10. No one, other than officers of the Court, jurors, the defendants, members of the bar, witnesses and the press, exclusive of photographers, shall be allowed inside the railing.

11. No pictures or *photographs* shall be made, exposed or taken inside the court room, and no one will be allowed to take any photographic picture making devise inside the court room.

12. The Sheriff of Lake County, Florida, is charged with the duty of enforcing these rules and to that end he is authorized to employ such number of deputies as may be necessary at the expense of Lake County, Florida, as part of the costs of the trial to be conducted during the time covered by these rules.

Done and ordered at Tavares, Florida, this the 23rd day of August, 1949.

T. G. Futch, Circuit Judge.

Affidavit

STATE OF FLORIDA

County of Lake:

Personally appeared before me, the undersigned authority M. A. Peterson, who, after being duly sworn, deposes and says:

[fol. 88] 1. That he is a citizen and resident of Lake County, Florida and has resided in Lake County, Florida for the past 9 years.

2. That because of ill-feeling and prejudice on the part of a great number of citizens of Lake County, Florida towards Charles Greenlee, Walter Irvin and Samuel Shepherd and because of undue excitement and prejudice among the people of Lake County, Florida, he does not believe that the said Charles Greenlee, Walter Irvin and Samuel Shepherd can receive a fair and impartial trial in Lake County, Florida in the case now pending against them in which each of the said defendants are charged with rape.

M. A. Peterson

Sworn to and subscribed before me this 28 day of August, A. D., 1949.

H. E. Hill, Notary Public. Notarial Seal. Notary Public State of Florida at Large. My commission expires July 5, 1953. Bonded by American Surety Co. of N. Y.

Affidavit

STATE OF FLORIDA

County of Lake:

Personally appeared before me, the undersigned authority, Henry C. Dean, who, after being duly sworn, deposes and says:

1. That he is a citizen and resident of Lake County, Florida and has resided in Lake County, Florida for the past 25 years.

2. That because of ill-feeling and prejudice on the part of a great number of citizens of Lake County, Florida towards Charles Greenlee, Walter Irvin and Samuel Shepherd and because of undue excitement and prejudice among the people of Lake County, Florida, he does not believe that the said Charles Greenlee, Walter Irvin and Samuel Shepherd can receive a fair and impartial trial in Lake [fol. 89] County, Florida in the case now pending against them in which each of the said defendants are charged with rape.

Henry C. Dean

Sworn to and subscribed before me this 28 day of August
A. D., 1949.

H. E. Hill, Notary Public. Notarial Seal. Notary
Public State of Florida at Large. My commission
expires July 5, 1953. Bonded by American Surety
Co. of N. Y.

Affidavit

STATE OF FLORIDA
County of Lake:

Personally appeared before me, the undersigned author-
ity, John Dingle, who, after being duly sworn, deposes and
says:

1. That he is a citizen and resident of Lake County,
Florida and has resided in Lake County, Florida for the
past 41 years.

2. That because of ill-feeling and prejudice on the part
of a great number of citizens of Lake County, Florida to-
wards Charles Greenlee, Walter Irvin and Samuel Shep-
herd and because of undue excitement and prejudice among
the people of Lake County, Florida, he does not believe
that the said Charles Greenlee, Walter Irvin and Samuel
Shepherd can receive a fair and impartial trial in Lake
County, Florida in the case now pending against them in
which each of the said defendants are charged with rape.

John Dingle

Sworn to and subscribed before me this 28 day of August
A. D., 1949.

H. E. Hill, Notary Public. Notarial Seal. Notary
Public State of Florida at Large. My commission
expires July 5, 1953. Bonded by American Surety
Co. of N. Y.

[fol. 90]

AFFIDAVIT

STATE OF FLORIDA,
County of Lake:

Personally appeared before me, the undersigned authority, Willie H. Odum, who, after being duly sworn, deposes and says:

1. That he is a citizen and resident of Lake County, Florida and has resided in Lake County, Florida for the past 28 years.

2. That because of ill-feeling and prejudice on the part of a great number of citizens of Lake County, Florida towards Charles Greenlee, Walter Irvin and Samuel Shepherd and because of undue excitement and *prejudice* among the people of Lake County, Florida, he does not believe that the said Charles Greenlee, Walter Irvin and Samuel Shepherd can receive a fair and impartial trial in Lake County, Florida in the case pending against them in which, each of said defendants, are charged with rape.

Willie Odum. Willie H. Odum.

Sworn to and subscribed before me this 28 day of August A. D., 1949. He E. Hill, Notary Public. (Notarial Seal.) Notary Public State of Florida at Large. My commission expires July 5, 1953. Bonded by American Surety Co. of N. Y.

[fol. 91] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR THE COUNTY OF LAKE

[Title omitted]

AMENDMENT TO THE MOTION FOR CONTINUANCE—Filed
August 29, 1949

Come now the defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin, by their undersigned attorney, to file this their Amendment to the Motion for Continuance heretofore filed in this cause, expressly reserving the right to file such other Motions or Pleas to the said indictment as they may lawfully have by the addition of the following Paragraphs of said Amendment to be in addition to the

grounds set forth in the original Motion and not in lieu thereof;

XIII

That since the filing of the original Motion for Continuance your defendants have been advised of many purported facts, which, if introduced as evidence in the trial, would prove their innocence, but that in order to present said facts, a considerable time will be necessary for investigation and for the obtaining of witnesses to be brought into Court and to present said facts, that it will be impossible to thoroughly investigate such matters and obtain said witnesses at the time for their trial.

XIV

That since the filing of their Motion for Continuance, a hurricane has swept through the County of Lake and in the County of Orange in which your defendants counsel resides and that because of said hurricane it was impossible for your defendants to utilize two night and one day in [fols. 92-93] the preparation of their defense.

Wherefore, your defendants pray that this Court will consider the above and foregoing as an Amendment to their Motion for Continuance heretofore filed in this cause and that the above and foregoing be considered in addition to the grounds set forth in the original Motion.

Alex Akerman, Jr., Attorney for Defendants.

I, Alex Akerman, Jr., do hereby certify that I am the counsel for the defendants in the above cause and that the above and foregoing Amendment to the Motion for Continuance in this cause is made in good faith.

Alex Akerman, Jr.

Duly sworn to by Alex Akerman, Jr. Jurat omitted in printing.

[fol. 94] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

REPLY OF STATE OF FLORIDA TO MOTION FOR CONTINUANCE—
Filed August 29, 1949

The State of Florida by its undersigned State Attorney denies each and every allegation of the Motion for Continuance in this case and demands strict proof of each allegation.

J. W. Hunter, State Attorney, 5th Judicial Circuit
of Florida.

[fol. 95] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

REPLY TO MOTION TO WITHDRAW PLEAS OF NOT GUILTY AND
SET ASIDE ARRAIGNMENT—Filed August 29, 1949

Now comes the State of Florida by J. W. Hunter, State Attorney for the Fifth Judicial Circuit of the State of Florida, and for reply to the Motion of the Defendants in the above styled cause, says:

That the offense alleged in said indictment was committed on the 16th day of July, A. D. 1949; that on the 20th day of July, A. D. 1949, indictment was found by Grand Jury and entered in the office of the Clerk of the Circuit Court in and for Lake County, Florida;

That on the 24th day of July, A. D. 1949, J. W. Hunter representing the State of Florida interviewed each of the Defendants at the State Prison in Raiford, Florida, asked them if they had attorneys to represent them, and told them that if they did not have attorneys to represent them that the Judge of the Circuit Court would furnish them with legal counsel, and would summons any and all witnesses they needed for their defense;

That on the 26th day of July, A. D. 1949, the following telegram was received by L. F. Chapman, Superintendent of the State Prison Farm at Raiford:

"Tampa, Florida, July 26, 1949. I have been retained by the National Association for the Advancement of

Colored People in behalf of Samuel Sheppard, Walter Iryin and Charles Greenlee. Please inform as to what hour I am interview the above named on Friday, July 30, 1949. (Signed) Wm. A. Fordham, Attorney at Law, 1404½ Central Avenue, Tampa, Florida."

[fol. 96] That on the 27th day of July, A. D. 1949, J. W. Hunter as State Attorney called Wm. A. Fordham at his office in Tampa, Florida, and told him that the State would like to arraign the Defendants as soon as the Defendants were ready, and offered to cooperate with him in securing a speedy trial of the case;

That on Monday, the 1st day of August, A. D. 1949, J. W. Hunter as State Attorney again called the said Wm. A. Fordham and asked him if he would agree to a date for arraignment and was informed by Fordham that he would have to report his findings to the National Association for the Advancement of Colored People before he could give his answer. Nothing further has been heard from the said Wm. A. Fordham;

That on the 11th day of August, A. D. 1949, one John G. Thomas, an attorney at law in Miami, called the Clerk of the Circuit Court in Lake County, Florida, and requested information in reference to said case; on the 12th day of August, A. D. 1949, J. W. Hunter as State Attorney called the said Thomas in Miami and informed him that the Defendants would be arraigned on the 12th day of August, A. D. 1949, at which time he was informed by Thomas that he had been approached by the National Association for the Advancement of Colored People but had not yet definitely accepted employment;

That on the 11th or 12th day of August, A. D. 1949, Alexander Akerman of Orlando called J. W. Hunter, State Attorney, and stated to him that he was considering the defense of the three Defendants, and was told by J. W. Hunter of their arraignment;

That on the 12th day of August, A. D. 1949, Hon. Harry E. Gaylord was appointed by the Court to represent the Defendants as their Attorney. The Defendants Sheppard and Iryin informed the Court that Mr. Gaylord was satisfactory to them; at said time and place Tom Greenlee, the father of Charles Greenlee, informed the Court that Mr. [fol. 97] Gaylord was satisfactory to them. Mr. Gaylord has, prior to that time, examined the indictment and it

was agreed by the counsel for the State and for the Defendants and by the Defendants themselves, together with Tom Greenlee the father of Chas. Greenlee, to try the case on the 29th day of August, A. D. 1949, and at said time and place in open court the State Attorney offered to summons at the expense of the State any and all witnesses desired by the Defendants or Tom Greenlee the father of the Defendant Charles Greenlee or Harry Gaylord their attorney. A jury has been summoned and the witnesses for the State have been subpoenaed. On the 24th day of August, A. D. 1949, the Motion before this Court was filed by Mr. Alexander Akerman representing the Defendants.

As a matter of fact, the National Association for the Advancement of Colored People is conducting the defense in this case, and an intensive investigation has been made by Assistant Special Counsel Franklin H. Williams for the National Association for the Advancement of Colored People from a few days after the commission of this crime until the present time. Mr. Alexander Akerman was accompanied before the Court on the 24th day of August, A. D. 1949, when this Motion was filed, by the said Special Counsel Franklin H. Williams.

On the 13th day of August, A. D. 1949, a dispatch supposing to have originated at Raiford, Florida, was published in many northern newspapers, where it was stated that Franklin Williams, Special Counsel of the National Association for the Advancement of Colored People, made an on-the-spot investigation of violence and race rioting at Groveland, Florida, and that the three young men charged with attacking Mrs. Willie Padgett had retained the National Association for the Advancement of Colored people [fols. 98-99] to handle their defense. Said dispatch further quoted the said Williams with saying that the three Defendants had signed retainers for said defense with said Association. Said newspaper articles, broadly circulated all over this country, also quoted Williams as citing evidence that has entirely convinced him that the three Defendants are entirely innocent.

Williams, as early as the 13th day of August, A. D. 1949, when these dispatches were published, had extensively made such a thorough investigation of the matter that he had convinced himself in advance of the innocence of the Defendants.

The State Attorney further says, on information and belief, that the said Alexander Akerman is employed by the National Association for the Advancement of Colored People to defend these Defendants, and that he has all of the information obtained by Williams in his investigation of the case over a period of more than a month; that Williams on yesterday before this Court was in company with Mr. Akerman and evidently has given Mr. Akerman the benefit of his thorough investigation.

The Defendants, Sheppard and Irvin, were incarcerated in the State Penitentiary at Raiford, Florida, on the 16th day of July, A. D. 1949, and the Defendant Greenlee on the 19th day of July, A. D. 1949. They were returned to Tavares on the 12th day of August, A. D. 1949, and have been in the jail at Tavares since that time.

Dated this 25th day of August, A. D. 1949.

J. W. Hunter, State Attorney.

[fols. 100-102] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

ANSWER TO APPLICATION FOR REMOVAL OF SAID CAUSE—Filed
August 29, 1949

Now comes the State of Florida by its State Attorney, J. W. Hunter, for the Fifth Judicial Circuit of Florida and denies each and every allegation for Application for Removal of cause and demands strict proof of said allegations.

J. W. Hunter, State Attorney, 5th Judicial Circuit of Florida.

[fols. 103-108] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

ANSWER TO AMENDMENT TO MOTION FOR CONTINUANCE—
Filed August 29, 1949

Now comes the State of Florida by its undersigned State Attorney for the Fifth Judicial Circuit of Florida, J. W. Hunter, and says:

That it denies each and every allegation of said Amendment to Motion for Continuance and demands strict proof of said allegations.

J. W. Hunter, State Attorney, 5th Judicial Circuit of Florida.

[fol. 109] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT, IN AND FOR THE COUNTY OF LAKE

[Title omitted]

AMENDMENT TO APPLICATION FOR REMOVAL OF CAUSE—Filed
August 30, 1949

Come now the defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin, by their attorney undersigned, and file this, their Amendment to Application for Removal of Cause from the Circuit Court of the Fifth Judicial Circuit in and for the County of Lake, Florida, and respectfully show unto the Court; that due to mistake and inadvertance and due to the pressure under which your defendants' counsel was laboring in an effort to meet the time set by this Court for all preliminary Motions, that the following paragraphs were omitted in the final draft of the Application for the Removal of Cause, and therefore, said defendants file this their Amendment to the Application for Removal of Cause and amend said Application.

XV

That because of the great publicity given this cause and because of the rumors now prevalent in Lake County, most of which, are not founded on facts, your defendants believe that most of the citizens of Lake County qualified

to serve on the jury have pre-conceived ideas of their guilt and that it will be impossible to obtain a fair and impartial jury in this cause, thus denying your defendants rights guaranteed them by the Constitution of the State of Florida and the Constitution of the U. S. of America.

[fol. 110]

XVI

That your defendant, Charles Greenlee is a Negro, age 16, and did not reside in Lake County, Florida and his family does not reside in Lake County, Florida; that your defendant, Samuel Shepherd is a Negro, age 22, and since the occurrence of the crime of which he is charged, his family have been compelled to flee from Lake County for their safety; that your defendant, Walter Irvin is a Negro, age 22, and since the occurrence of the crime of which he is charged, his family have been compelled to flee from Lake County for their safety; that the prosecutrix is related by blood or marriage to a great number of the citizens of Lake County, Florida; that the family of the prosecutrix and the family of her husband have resided in Lake County, Florida for a long period of time and are prominent economically and politically and have great influence in Lake County, Florida; that because of the influence of the prosecutrix, her husband, and their families, your defendants believe that it will be impractical to obtain a fair and impartial jury in Lake County, Florida.

XVII

That immediately after your defendants were arrested they were brutally beaten and abused over a long period of time by persons purporting to be law enforcement officers of Lake County, Florida in an effort to intimidate and compel your defendants to confess to the crime for which they are now charged; that as a result of said beatings and fear and intimidation your defendants Samuel Shepherd and Charles Greenlee did make purported confessions; that said confessions do not speak the truth and were only made because of the beatings and fear of continued beatings and because defendants did fear unless they made such purported confessions the beatings would continue even to the extent of the taking of the lives of your defendants; that the Sheriff of Lake County, Florida did announce that all of the said defendants had confessed

to the crime for which they are now charged and the news [fol. 111] of such confessions was widely disseminated through the County of Lake, through newspaper and radio reports and otherwise; that your defendants fear most of the citizens of Lake County, Florida qualified to serve on the jury in this case have heard of the confessions and believe all of your defendants have confessed to the crime for which they are now charged; that although said confessions are clearly inadmissible in evidence it will be impracticable for said jurors to erase these purported confessions are clearly inadmissible in evidence it will be impossible for your defendants to receive a fair and impartial trial, thus denying them rights guaranteed them by the Constitution of the State of Florida and the Constitution of the U. S. of America.

Wherefore, your defendants pray that this Court will consider the above and foregoing as an Amendment to their Application for Removal of Cause heretofore filed in this cause and that the above and foregoing be considered in addition to the grounds set forth in the original Application for Removal of Cause.

Alex Akerman, Jr., Attorney at Law.

I, Alex Akerman, Jr., do hereby certify that I am the counsel for the defendants in the above and foregoing cause and that the above and foregoing Amendment to the Application for Removal of Cause in this cause is made in good faith.

Alex Akerman, Jr.

[fols. 112-114] *Duly sworn to by defendants. Jurats omitted in printing.*

[fol. 115] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

ANSWER OF THE STATE TO THE AMENDMENT TO APPLICATION FOR REMOVAL OF CAUSE—Filed August 30, 1949

Now comes the State of Florida by J. W. Hunter, State Attorney for the Fifth Judicial Circuit of Florida and for

answer to the said amendment to application for removal of cause says:

1. That same is vague and indefinite.
2. That same are mere conclusions and inferences therefrom by the pleader.
3. That the information attempted to be furnished is immaterial.
4. That there is no foundation for the causes and implications in said pleading.
5. The State of Florida denies each and every allegation of said amendment to application for removal of cause and demands strict proof of all that part, if any, which is material to that cause.

J. W. Hunter, State Attorney, 5th Judicial Circuit of Florida.

[fol. 116] IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR THE COUNTY OF LAKE

[Title omitted]

CHALLENGE TO THE PANEL—Filed September 1, 1949.

Come now the defendants, Charles Greenlee, Samuel Shepherd and Walter Irvin, by their undersigned attorney and file this their Challenge to the Panel herein and as grounds for said Challenge state:

I

That your defendants are Negroes and were indicted for the crime of rape by a grand jury of the County of Lake, State of Florida, on the 20th day of July, 1949.

II

That trial upon the charge contained in the said indictment has been set by the Judge of the Circuit Court for the 1st day of September, 1949. That on or about the 19 day of August, 1949, a panel of veniremen was summoned for this case consisting of approximately 150 citizens and residents of the County of Lake; and that among such veniremen so summoned there were 3 Negroes.

III

That a large proportion of the residents and citizens of said Lake County are members of your defendant's race; more specifically, of a total population over 21 years of age of approximately 18,000 residents, Negroes constitute one-fourth or approximately 4,500.

[fol. 117]

IV

That for over a long and extended period of years, few, if any members of your defendants' race have served on the petite juries of the said Lake County.

V

That among the Negro citizens of the said Lake County there are a very great many who have resided in the State for one year, and in the County of Lake for six months; who are law-abiding citizens of great integrity, good character, sound judgment and intelligence; and who are not physically or mentally infirm; and who possess all of the other qualifications for petite jury service set forth in the statutes and laws of the State of Florida.

VI

That the Jury Commissioners of the said Lake County have and for many years have had the custom, practice and usage of selecting prospective petite jurors from the registration rolls of the said county; with knowledge of the fact that Negroes in the said County had failed, refused or been prevented for many years from freely registering to vote in said county and that of a total of 14,182 registered voters in the County, Negroes constituted one-sixteenth or 802; and that such practice, custom and usage has resulted in few, if any Negroes serving or having the opportunity to serve on the petite juries of the said County, solely because of their race or color.

VII

That the purposeful and deliberate use by the said Jury Commissioners of the registration rolls of the County for choosing or selecting prospective petite jurors is neither required nor warranted by the statutes and laws of the State of Florida.

VIII

That the said Jury Commissioners of Lake County know that a large and substantial proportion of the Negro citizens of Lake County own property, pay taxes, conduct themselves as law-abiding citizens of high integrity and character; who possess all of the qualifications for petit jury service required by the laws or statutes of the State of Florida; and they also know that of such citizens a very small number register to vote or appear on the registration rolls of the said County; and with such knowledge have had and still have the practice and custom of choosing prospective petit jurors from the said registration rolls.

IX

That these facts establish that the venire in the instant cause was not selected or drawn according to law but rather that it was summoned, chosen, impanelled or drawn by state officers in a manner that has resulted in a denial to your defendants of rights guaranteed them by the equal protection and due process clauses of the Fourteenth Amendment to the U. S. Constitution and the Constitution and Laws of the State of Florida.

Wherefore, your defendants pray that this Court sustain this Challenge to the panel herein upon the grounds set forth above.

Alex Akerman, Jr., Attorney for Defendants.

[fols. 119-133] *Duly sworn to by defendants. Jurats omitted in printing.*

[fol. 134] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted] -

MOTION FOR NEW TRIAL—Filed September 6, 1949

Come now the defendants, Samuel Shepherd and Walter Irvin by their attorney undersigned and move the Court

to grant a new trial herein and for grounds for said Motion say:

1. The Verdict is contrary to the evidence.
2. The Verdict is contrary to the law.
3. The Verdict is contrary to the law and the evidence.
4. The Court erred in denying Motion of the defendants to Withdraw Plea of Not Guilty and Set Aside Arraignment filed on August 25, A. D., 1949.

5. The Court erred in refusing to consider the Motion to Quash filed on August 25, A. D., 1949 and ordering such Motion stricken from the file.

6. The Court erred in denying the defendants Motion for Continuance filed on August 25, A. D., 1949.

7. The Court erred in denying the defendants' Motion to Withdraw Plea of Guilty and Set Aside Arraignment filed on August 29, A. D., 1949.

8. The Court erred in refusing to require the State to file in its Bill of Particulars the information sought in Paragraphs II and III of defendants' Motion for Bill of Particulars.

[fol. 135] 9. The Court erred in denying defendants' Application for Removal of Cause.

10. The Court erred in refusing to admit, in the hearing for the Motion for Continuance and Motion for Application for Removal of Cause, the testimony of Dr. Nelson W. B. Spaulding, as to the physical condition of the defendants showing that they had been beaten.

11. The Court erred in refusing to allow the defendant, Charles Greenlee to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida.

12. The Court erred in refusing to allow the defendant, Samuel Shepherd to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida.

13. The Court erred in refusing to allow the defendant, Walter Irvin to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida.

14. The Court erred in denying the defendants' Challenge to the Panel.

15. The Court erred in denying the defendants' Motion for Continuance made September 1st, A. D., 1949.

16. The Court erred in admitting into evidence, over the objections of the defendants, the shoes and pants alleged to have been the property of Walter Irvin.

17. The Court erred in admitting into evidence, over the objections of the defendants, the cast of the alleged tire tracks.

18. The Court erred in admitting into evidence, over the objections of the defendants, the cast of the alleged shoe prints.

[fols. 136-137] 19. The Court erred in allowing the witness Ethel Thomas to testify over the objections of the defendants, as to an alleged conversation she had with Ernest Thomas.

Alex Akerman, Jr., Attorney for Defendants.

[fols. 138-139] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

JUDGMENT AND SENTENCE—Filed September 8, 1949

You, Walter L. Irvin, having had a fair trial by a jury of your countrymen, and having been found guilty of the crime of rape, the Court now adjudges you to be guilty of that offense. What have you to say why the sentence of the law should not be pronounced upon you?

Saying nothing to preclude such sentence

It is thereupon the judgment of the Court and the sentence of the law that you, Walter L. Irvin, for the crime for which you have been and stand convicted, be delivered by the Sheriff of Lake County, Florida, to the proper officer of the State Prison of the State of Florida, and be by him safely kept until such day and time as the Governor by his warrant may appoint, at which time, as by said warrant directed, and within the walls of the permanent death chamber provided by law, you, Walter L. Irvin, be by the proper officer of said Prison, electrocuted until you be dead; and may God have mercy on your soul.

Done, ordered and adjudged in open Court at Tavares, Lake County, Florida, this the 8th day of September 1949.

T. G. Futch, Circuit Judge.

Clerk's Certificate to foregoing paper omitted in printing.

[fols. 140-144] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

JUDGMENT AND SENTENCE—Filed September 8, 1949

You, Samuel Sheppard, having had a fair trial by a jury of your countrymen, and having been found guilty of the crime of rape, the Court now adjudges you to be guilty of that offense. What have you to say why the sentence of the law should not be pronounced upon you?

Saying nothing to preclude such sentence

It is thereupon the judgment of the Court and the sentence of the law that you, Samuel Sheppard, for the crime for which you have been and stand convicted, be delivered by the Sheriff of Lake County, Florida, to the proper officer of the State Prison of the State of Florida, and be by him safely kept until such day and time as the Governor by his warrant may appoint, at which time, as by said warrant directed, and within the walls of the permanent death chamber provided by law, you, Samuel Sheppard, be by the proper officer of said Prison, electrocuted until you be dead; and may God have mercy on your soul.

Done, ordered and adjudged in open Court at Tavares, Lake County, Florida, this the 8th day of September 1949.

T. G. Futch, Circuit Judge.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 145] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL—Filed September 8,
1949

This cause coming on to be heard further upon motion of the defendants Samuel Sheppard and Walter Irvin for a new trial, upon nineteen assignments of error, most of which present matters and questions heretofore ruled upon by this Court.

[This case has been handled in what appears to this Court to be a very peculiar manner, in that counsel for the defendants seem to have been far more intent upon injecting the racial question into the record than in maintaining the presumption of innocence with which the law clothes the defendants in their trial.] However the defendants were accorded a fair and impartial trial throughout the proceedings. The record will show that when there was any possible room to question the qualification of a juror to sit in this case he was excused. The record will further show that the State's Attorney was particularly careful to be fair and honest with the defendants in presenting the State's case. The record shows that the defendants were given ample opportunity to prepare their defense, and there is a total lack of so much as a suggestion on the part of the attorneys for the defendants that they were unable to procure the attendance of any witness which they desired. There appears to this court not the slightest reason for granting the motion on either, any or all of the grounds set forth therein, therefore, it is

[fols. 146-153] Ordered that the motion for a new trial, filed on the 6th day of September 1949, in behalf of the defendants, Samuel Sheppard and Walter Irvin, by their attorney, Alex Akerman, Jr., be and the same is denied.

Done and ordered at Tavares, Lake County, Florida, this the 8th day of September 1949.

T. G. Futch, Circuit Judge.

[fol. 154] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed September 23, 1949

Come now the defendants, Samuel Shepherd and Walter Irvin and appeal to the Supreme Court of Florida from the Judgment and Conviction and the Sentence in the above entitled cause entered on September 8, A. D., 1949 and recorded in Minute Book 20, pages 276-77, and from the Order denying the motion for the new trial entered on September 8, A. D., 1949 and recorded in Minute Book 20, page 279.

Alex Akerman, Jr., 401 First National Bank Building, Orlando, Florida, Attorney for Defendants.

[fols. 155-156] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA,

VERSUS

WALTER L. IRVIN, SAMUEL SHEPPARD AND CHARLES GREENLEE

VERDICT

We the jury find the defendants guilty.

So say we all, By majority recommendation of mercy for Charles Greenlee.

Charles A. Blaze, Foreman.

[fol. 157] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[Title omitted]

GROUND OF APPEAL—Filed November 21, 1949

Comes now the defendants, Samuel Shepherd and Walter Irvin, by their undersigned attorneys and file this, their grounds of appeal in the above cause:

1. The Verdict is contrary to the evidence.
2. The Verdict is contrary to the law.

3. The Verdict is contrary to the law and the evidence.

4. The Court erred in denying Motion of the defendants to withdraw Plea of Not Guilty and Set Aside Arraignment filed on August 25, A. D., 1949, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

5. The Court erred in refusing to consider the Motion to Quash filed on August 25, A. D., 1949, and ordering such Motion stricken from the file, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

[fol. 158] 6. The Court erred in denying the defendants' Motion for Continuance filed on August 25, A. D., 1949, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

7. The Court erred in denying the defendants' Motion to Withdraw Plea of Guilty and Set Aside Arraignment filed on August 29, A. D., 1949, and thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

8. The Court erred in refusing to require the State to file in its Bill of Particulars the information sought in Paragraphs II and III of defendants' Motion for Bill of Particulars.

9. The Court erred in denying the defendants' Application for Removal of Cause, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

10. The Court erred in refusing to admit, in the hear-

ing for the Motion for Continuance and Motion for Application for Removal of Cause, the testimony of Dr. Nelson W. B. Spaulding, as to the physical condition of the defendants showing that they had been beaten, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

[fol. 159] 11. The Court erred in refusing to allow the defendant Charles Greenlee to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

12. The Court erred in refusing to allow the defendant, Samuel Shepherd, to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

13. The Court erred in refusing to allow the defendant, Walter Irvin, to testify at the hearing for the Motion for Continuance and Application for Removal of Cause that he had been beaten by law enforcement officials of the County of Lake, Florida thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

14. The Court erred in denying the defendants' Challenge to the Panel, thereby depriving said defendants of life or liberty without due process of law and denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

15. The Court erred in denying the defendants' Motion for Continuance made September 1st, A. D., 1949, thereby depriving said defendants of life or liberty without due [fol. 160-168] process of law and *and* denying them the equal protection of the laws as guaranteed them by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Florida.

16. The Court erred in admitting into evidence, over the objections of the defendants, the shoes and pants alleged to have been the property of Walter Irvin.

17. The Court erred in admitting into evidence, over the objections of the defendants, the cast of the alleged tire tracks.

18. The Court erred in admitting into evidence, over the objections of the defendants, the cast of the alleged shoe prints.

19. The Court erred in allowing the witness Ethel Thomas to testify, over the objections of the defendants, as to an alleged conversation she had with Ernest Thomas.

20. The Court erred in denying defendants' Motion for a New Trial.

Alex Akerman, Jr., Joseph E. Price, Jr., Attorneys
for defendants. 401 First National Bank Building,
Orlando, Florida.

[fols. 169-172] IN THE CIRCUIT COURT, FIFTH JUDICIAL
CIRCUIT, IN AND FOR LAKE COUNTY, STATE OF FLORIDA

THE STATE OF FLORIDA, Plaintiff,

vs.

SAMUEL SHEPHERD, WALTER L. IRVIN, CHARLES GREENLEE,
ERNEST E. THOMAS, Defendants

Transcript of Testimony and Proceedings

Tavares, Florida,

August 29, 30; September 1, 2, 3, 1949.

Before: Honorable Truman G. Futch, Circuit Judge.
And a jury.

APPEARANCES: For the State: Honorable J. W. Hunter,
State Attorney; Hon. Samuel Buoy, Asst. State Attorney.

For the Defendants: Mr. Alex Akerman, Esq., Attorney
at Law, Orlando, Florida; Mr. Franklin L. Williams, Esq.,
Attorney at Law; Mr. Robert Hill, Esq., Attorney at Law,
Daytona Beach, Florida; Mr. Joe Price, Esq., Attorney at
Law, Orlando, Florida.

[fol. 173]

Tavares, Florida.

August 29, 1949.

(The Court opened at 10 A. M. August 29, 1949.)

(A jury was called, qualified on voir dire and excused
until 10 o'clock, A. M., Thursday, September 1st, 1949.)

(The Court then proceeded to hearing on motions for
change of venue and continuance and the following pro-
ceedings were had:)

COLLOQUY RE MOTIONS

Mr. Hunter: Your Honor, There have been some motions
filed here by the Defendants, we would like to have them
presented to the Court.

Mr. Akerman: If the Court please, at the conclusion of
the hearing on the 25th in which the Court denied the
motion to withdraw the plea of not guilty, set aside the
arraignment, we tendered and filed to the Court a motion
to quash the indictment and I would like to ask for a

ruling of the Court whether that motion to quash will be considered?

Mr. Hunter: My understanding was that the motion was considered and denied.

Mr. Akerman: My understanding was that the Court denied the motion to set aside—withdraw the plea and set aside the arraignment but after a decision, we tendered the motion to quash.

Mr. Hunter: Well it is untimely filed for one thing, and testimony taken here on the motion as made and was denied by the Court. Is my recollection of it.

[fol. 174] The Court: There was no action taken on the motion to quash. The motion to withdraw the plea was of course heard and denied.

Mr. Hunter: That's right.

The Court: But the motion to quash being filed too late will not be considered by the Court and is stricken from the record.

Mr. Akerman: At the conclusion of the hearing—

Mr. Hunter: Now just wait a moment, here. The Defendants are not here

Mr. Akerman: We'll waive that.

Mr. Buoy: No, we can't waive it.

Mr. Hunter: We have ordered the Sheriff to bring the defendants into Court, Your Honor.

The Court: Sheriff, bring the defendants down.

Mr. Akerman: At this time, if the Court please, while they are bringing the defendants down, we ask the Court to set bail for James Shepperd, who is being held under Court [fol. 175] orders as a material witness.

The Court: Motion denied.

(At this point, the defendants were brought into the Courtroom and the foregoing proceedings read back by the Reporter.)

Mr. Hunter: I want the record to show that the defendants are now in the Courtroom and have heard the reading of the proceedings to this point.

Mr. Akerman: On August 25th, at the conclusion of the hearing the defendants filed a motion for continuance. On this morning, we filed an amendment to that motion for a continuance. We would like to have the Court set a time for the hearing of that motion.

Mr. Hunter: We would like to have the motion read to the Court, including the amendment.

(Whereupon, the Motion was read.)

Mr. Akerman: In paragraph 9, I ask at this time to amend in open Court so that it will read in accordance with the fact, "That your defendants were held in custody at Raiford up until the time of their arraignment. And their only opportunity to contact parties—

[fol. 176] Mr. Hunter: What are you going to do about the time after the arraignment?

Mr. Akerman: All right.

"At which time they were sent to the County of Lake and have remained since then."

The Court: Motion granted.

(Whereupon, the reading was continued.)

Mr. Akerman: We want to amend paragraph No. 10 to the effect that,

Your defendants were incarcerated in the State Prison at Raiford until the time of their arraignment. At which time, they were returned to Lake County, Florida, and have ever since remained.

The Court: Permission granted.

Mr. Akerman: That said State Prison at Raiford is at a distance of more than 100 miles from Lake County and that it is at a distance of more than 100 miles from the offices of their defense counsel and that it is extremely inconvenient and impractical for your defendants to confer with their counsel, and so forth.

(The reading of the motion was continued to the end.)

Mr. Akerman: Attached to that is a certificate by defense counsel which is filed in good faith.

[fol. 177] Mr. Hunter: Now, before we go on, I have the exceptions to the motion.

(Whereupon, the paper was read to the Court.)

Mr. Hunter: Let that be filed and give Mr. Akerman a copy of it. Now, you have a motion for an amendment to that document?

Mr. Akerman: Amendment to the motion for continuance.

(Whereupon the paper referred to was read.)

Mr. Akerman: That also carries a certificate filed in good faith.

Mr. Hunter: Now comes the State of Florida . . .

(Whereupon, Exceptions to the Amendment to Motion for Continuance was read to the Court.)

Mr. Akerman: All right, sir. That's the issue before the Court. We would like to have it set for hearing.

Mr. Hunter: Let me make this suggestion, Mr. Akerman. I presume you are going to present proof as to your allegations in this. Now, the same proof very likely will go to other motions that you have. Would it not be a good idea to finish the filing of these motions and then set all of them for a hearing at some future date?

[fol. 178] Mr. Akerman: Well, I think considerable portion of the same proof would be applicable and I think it is perfectly agreeable to us and to the State and to the Court.

The Court: All right. Let's have your next motion.

Mr. Akerman: We have also filed a motion for a bill of particulars.

(Whereupon, the said motion was read to the Court.)

Mr. Hunter: I haven't filed an answer to that, Your Honor, but I will say that I will file one later to this effect. The law only requires in a case of this kind that a list of witnesses upon which the indictment was found be filed. However, I will file a list including all the witnesses that I know at the present time, that we will use and, "(2) a complete statement showing her activities from 6 PM up to the time she alleged she first saw the defendants."

\ That, we will object to for two reasons.

1. That her activities prior to the time of meeting these parties would very likely be irrelevant and immaterial.

2. The State is not required to plead its evidence by way of a bill of particulars and the same thing applies to Willie Padget, which is No. 3.

The Court: What have you to say as to the rest?

Mr. Hunter: As to No. 4, the state will furnish that to [fol. 179] the best of its ability. I don't know that this woman had a stop watch and took that time but they will give it the best they can.

And the 5th. We will furnish a bill of particulars showing to the best of our ability what that time was but we may

not be able to show an exact time? The Supreme Court has held that in a bill of particulars of this kind, that you are allowed such latitude as is reasonable and necessary in answering a bill of particulars.

And the 5th, we'll furnish that to the best of our ability but possibly not exact, because the law doesn't require to furnish it exact.

Now, the only one we object to is the third and fourth, which attempt to have us plead all of the evidence which we have, a large part of which would probably be irrelevant and immaterial. The State can't be compelled to plead all its evidence by way of a bill of particulars. If it did, you might just as well try the case before the Judge before you start.

Mr. Akerman: If it is immaterial it wouldn't be admissible but if it does develop material facts we allege to believe is necessary for the preparation of our case.

The Court: I can't see how that would have anything to do with the defense. More of a fishing expedition than anything else.

I understand the State is willing to respond to the motion [fol. 180] with the exception of items 3 and 4?

Mr. Hunter: Well let's see. —It's 2 and 3.

(Whereupon, Items 2 and 3 were read to the Court.)

The Court: Motion granted with the exception of items 2 and 3.

It is understood, too, that they can give such witnesses as they know of at this time.

It is understood of course that there are exceptions to all these rulings.

Mr. Akerman: This is a motion to set aside the arraignment with motion to withdraw pleas, set aside arraignment and file motion to quash the indictment.

Mr. Hunter: That's been passed on.

Mr. Akerman: It is on additional grounds tendering additional indictment.

The Court: You are filing a second motion?

Mr. Akerman: That's right.

[fol. 181] (Whereupon the motion referred to was read to the Court.)

Mr. Akerman: And the Motion to Quash the Indictment.

(Whereupon, the paper referred to was read.)

Mr. Hunter: Now to that, we answer that the same is vague and indefinite.

(Whereupon, the Answer of the State was read.)

Mr. Akerman: And we ask for a hearing on that.

The Court: Well, we can hear them all at the same time. The evidence on one will be good on the other.

Mr. Akerman: We also file in the cause application for removal of cause.

(Whereupon, the paper was read.)

Mr. Akerman: That is also bearing a certificate of good faith filed by me. It is sworn to by each of the defendants. And attached to it are the exhibits referred to and in addition to that, there is attached to the affidavits of four citizens of Lake County to the effect that because of the ill feeling, prejudice and so forth on the part of that, it does not—and because of the undue excitement they do [fol. 182] not believe that the defendants will receive a fair and impartial trial in Lake County, Florida.

Mr. Hunter: Now to that, we file an answer. We deny each and every allegation or application for removal for cause and demand strict proof of same.

Mr. Akerman: Now as I understand the ruling of the Court, I am asking the Court for its ruling on the filing of motions you set at 11 o'clock, today. Just what effect does that have?

The Court: Well, I stated it covered all preliminary motions that counsel might have in mind filing. If there is something else that comes up that there is some reason for filing, we will give it due consideration. Not an absolute exclusion.

Can we hear these things tomorrow morning at 10 o'clock? If you have your witnesses here you might proceed today.

Mr. Akerman: It is going to require the summoning of quite a number of witnesses, some of them from other parts of the State. I don't see how we can prepare our praecipes for summons.

The Court: Motions will be set for hearing at 10 o'clock, tomorrow morning.

[fol. 183] Mr. Akerman: Exceptions to all rulings, as I understand it?

The Court: Yes. That's understood.

Mr. Akerman: There's been no ruling of course, as yet, upon the motion to set aside the arraignment?

The Court: Not to the last motion.

Mr. Akerman: In the event that the Court should rule in our favor, and allow us to file the motion to quash, we will then be allowed some time to bring evidence in? In other words, we will have some motions to the County Commissioners and jury list and so forth, and I didn't want to summons these until the ruling of the Court on the motion to set aside.

The Court: Recess until tomorrow morning at 10 o'clock.

(The Court then recessed until 10 o'clock AM, August 30, 1949, at which time the following proceedings were had:)

Mr. Akerman: If the Court please, after I returned to Orlando, yesterday, I discovered that in the final draft of the amendment for the application for removal of cause that certain paragraphs were omitted. So we sent over an amendment that was filed yesterday afternoon and I would like to read that amendment to the Court before we proceed.

[fol. 184] (Whereupon, the amendment was read.)

Mr. Akerman: That's certified by the attorneys.

Mr. Hunter: To that, we file an answer.

(Whereupon, the answer referred to was read.)

Mr. Hunter: Now I want to call the attention of one thing to the Court. That there is a lot of absolutely false things going into these pleadings that are being sworn to here. I presume now that Mr. Akerman will want to prove.

Mr. Akerman: I move that that remark of the State Attorney be stricken from the record. There is a proper method of determining whether these will be true or not by the giving of testimony before the Court, today.

Mr. Hunter: Then I will amend and say further that since it is a libel upon the people of the County of Lake, that we demand strict proof of each one of these allegations.

The Court: Does the State object to the amendment being filed?

[fol. 185] Mr. Hunter: No sir.

The Court: All right. Let the amendment be filed.

Mr. Hunter: That is, I do not object to it for what it is.
The Court: I said, to it being filed.

Mr. Hunter: That's right.

Mr. Akerman: If the Court please, it is my understanding on yesterday that this hearing today, is set for the purpose of taking testimony both in support of and in opposition to the various motions that have been filed?

The Court: That's right.

Mr. Akerman: Can we at this time get a stipulation or an order of Court that testimony shall go to each one of the motions?

The Court: That's what I understood was to be the result of it yesterday.

Mr. Akerman: Yes sir.

Mr. Hunter: That's right.

[fol. 186] The Court: To take testimony on all of them at the same time.

(Whereupon, certain witnesses were called.)

Mr. Akerman: At this time, the defendants ask that the following subpoenas be issued and served:

Subpoena issued to the Managing Editor of the Lakeland Ledger, whose name is unknown to your defendants, requiring him to appear in this Court instanter and bring with him copies of the newspaper, The Lakeland Ledger, from July 15, 1949, up to the date of the issuance of this subpoena and, to also bring with him his records showing the circulation of the Lakeland Ledger in Lake County.

Defendants further request that a subpoena be issued to John Doe, Special Agent, of the FBI, whose further name is unknown to your defendants. Said agent being the agent of the Federal Bureau of Investigation who examined your defendants in the State prison at Raiford approximately August 7th, 1949 and that a further subpoena be issued to Richard Roe, Special Agent of the Federal Bureau of Investigation, whose true and correct name is unknown to your defendants. Said Agent of the Federal Bureau of Investigation of the United States Government, who examined your defendants in the State Prison at Raiford on or about August 7, 1949.

We ask those subpoenas be issued and an attempt made to serve them.

[fol. 187] Mr. Hunter: Your Honor, I object to that. It is entirely beyond any request that should be made of this

Court. If the Defendants want these witnesses here let it be not by a special order of this Court but by a regular method of filing a praecipe with the clerk of this Court for the issuance of those subpoenas.

The Court: The Court will not issue any order requiring the subpoenaing of the witnesses mentioned.

Mr. Akerman: We now ask a recess until the praecipes can be written.

The Court: We will proceed with the issue before the Court.

(Whereupon, certain other witnesses were called.)

MR. CHARLES MEDLIN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Akerman:

Q. State your name, please?

A. Charles Medlin.

Q. Where do you live, Mr. Medlin?

A. Orlando.

Q. What is your business or profession?

A. Business Manager, Orlando Daily Newspapers.

Q. Does the Orlando Daily Newspaper Corporation publish any newspapers in the State of Florida?

A. Yes, sir.

[fol. 188] Q. Kindly name the papers published by the Corporation of which you are the business manager.

A. Orlando Evening Star and Orlando Morning Sentinel. Sunday Sentinel Star.

Q. Where are those papers published?

A. Orlando.

Q. Orange County, Florida?

A. That's right.

Q. Do those papers have circulation in Lake County, Florida?

A. They do.

Q. Do you have your circulation figures for the circulation of these newspapers throughout Lake County, Florida, from the time beginning approximately July 15th, 1949, up until this date?

A. Yes, sir.

Q. Will you kindly give the circulation of each of those papers, until this date?

A. The Sentinel, Orlando Morning Sentinel, was approximately 3,858 papers. The last—we have four figures there. That's approximately estimated, Covering South Lake County, Clermont, and the mail. Three files.

Q. And what was the figure of the approximate circulation of the Orlando Morning Sentinel in Lake County, Florida?

A. 3,858.

Q. Is that the approximate figure of that circulation of the Orlando Morning Sentinel from a period of time, July 15th, 1949, up to the present date?

A. It is.

Q. Do you have the circulation figures for the Orlando Evening Star?

A. I do. 398.

[fol. 189] Q. And is that the approximate circulation in Lake County, Florida?

A. Yes, sir.

Q. Covering the entire period of time from July 15, 1949, up to the present date?

A. It is.

Q. Do you have the circulation figures of the Sunday Sentinel Star in Lake County, Florida?

A. I do.

Q. Will you give us the approximate circulation of the Sunday Sentinel Star in Lake County, Florida in the period of time, July 15th, 1949, up until the present date?

A. 4,137.

Q. Do you have with you the issue of the Sunday Sentinel Star for July 17th, 1949?

A. (Indicating by head.) Yes.

Q. Will you let me have it, please, sir?

A. (Witness produced paper.) That's the right one, isn't it?

Q. Yes. Is this the paper published by your organization for July 17th, 1949?

A. If that's the date on it, yes. July 17th.

Q. And about what you have been testifying as being circulated throughout Lake County, Florida?

A. (Indicating by head.) Yes.

Mr. Akerman: Defendants offer in evidence that part of the newspaper appearing on page 1 of said newspaper, headlined, "Lake County Bride Kidnapped," and the news story column, being the last column on the righthand side of the front page.

Mr. Hunter: I have no objections to that.

Mr. Akerman: Defendant's exhibit A.

[fol. 190] Mr. Akerman: Admitted, Your Honor?

The Court: That's admitted with the understanding that you procure a copy of that article and substitute for it.

Mr. Hunter: I'd like to ask a question. I withdraw my not objecting to this and ask you this question, sir.

Cross-examination.

By Mr. Hunter:

Q. Where did you get this paper?

A. Out of our files.

Q. Is it your private files?

A. (Indicated by head.) Yes.

Q. Do you object to using them in a proceeding of this kind under a subpoena of this kind?

A. Well, we like to continue to hold our files intact.

Mr. Hunter: Then I'll object to the introduction as being improper and an invasion of the private rights of this newspaper. It is immaterial, anyway. The whole thing is immaterial.

Mr. Akerman: In reply to the objection of Mr. Hunter, I think the lives of three persons are possibly more important than the private files of a newspaper.

Mr. Hunter: I don't accept that issue because that's not the issue here at all.

[fol. 191] The Court: Well, the article referred to will be admitted. But the newspaper as a whole is not admitted and you will have to procure a copy of the items and return the original paper to the witness intact.

Mr. Akerman: I believe we can handle it in this manner, if the Court please.

Redirect examination.

By Mr. Akerman:

Q. Mr. Medlin, I hand you here a newspaper article appearing in the Sunday Sentinel Star of July 17th, 1949,

and ask you to read from the article starting ^D with the headlines. Read the article into the record.

Mr. Hunter: Object to that. First, the article is irrelevant and immaterial to any issue in this case. Second, the article has been introduced, itself. Now I want to make this statement.

I may be mistaken but I have been informed—those gentlemen can correct me if I'm not correct.—that it is their purpose to read newspaper articles and other things for the balance of this week so that the Court cannot function here in the trial of this case on Thursday. Now that's my information.

Mr. Akerman: The gentleman is entirely incorrect. We do not intend to put into this record every newspaper article that disseminated throughout Lake County, Florida. It is definitely material to our motion for a removal of cause and for continuance in the case.

[fol. 192] The Court: Well, the objection to reading the article is sustained. I told you how you can get it into the record.

Mr. Hunter: I want this observation to go in this record.

There will be a jury called here and the defendants' attorneys will have every opportunity to question those jurors as to whether they read these papers or not and whether they formed an opinion from those papers, that will preclude them from rendering a fair and just verdict in this case.

Mr. Akerman: If the Court please, we have alleged the dissemination of newspaper articles throughout Lake County, Florida. The State has denied it and demanded strick proof thereof of each and every allegation. The State's attorney, this morning—

The Court: No use taking up the time of the Court arguing there. I told you how to get those articles in and that's the only way they are going in.

Mr. Akerman: All right. It's admitted in evidence. May I be allowed to read the article to the Court.

The Court: No. I'll read it, myself.

[fol. 193] Mr. Akerman: We at this time offer to read and call the Court's attention to the fact that the hearing on the previous motion, the State's Attorney was allowed to

read the articles into the evidence under the same circumstances.

Mr. Hunter: We deny that. It is not true.

The Court: The Court is able to read. He may not be able to go much further.

By Mr. Akerman:

Q. Mr. Medlin, do you have with you a copy of the Orlando Morning Sentinel for July 18th, 1949?

A. (Paper was produced by the witness.)

A. I do.

Q. May I have it, please, sir? (Paper was handed to counsel)

Q. I ask you, is there an article appearing in that paper on the front page of the paper, headlined, "Troops Ordered to Groveland"?

A. Yes.

Q. And is there an article then under that headline appearing in the last column on the righthand side of the front page of that paper, sub-headlined, "Mob Violence Flared after Kidnapping"?

A. Yes.

Q. Was that article published in your paper as of that date?

[fol. 194] A. Yes sir.

Q. And disseminated throughout Lake County, Florida.

A. Yes.

Mr. Akerman: Defendants offer that part of the Orlando Morning Sentinel of Monday, July 18th, 1949, consisting of the headline, "Troops ordered to Groveland," and the subheadline, "Mob Violence feared after kidnapping," and the rest of the article immediately following the subheadline appearing on the last righthand column of the front page of said paper.

Mr. Hunter: I have seen that.

Mr. Akerman: It is tendered.

Mr. Hunter: I have no objection to it on the order made in the former paper.

The Court: The article, itself, is admitted in evidence but it will have to be a copy substituted for the one that's there and the paper returned to the witness.

(Whereupon, the article referred to ~~was~~ received as Defendant's Exhibit B.)

The Court: The copies in the motion for the change of venue may be used.

[fol. 195] Mr. Akerman: At this time, the defendant proffers to have the article read into the record.

The Court: Proffer overruled.

By Mr. Akerman:

Q. Mr. Medlin, do you have a copy of the Orlando Evening Star for Monday, July 18th, 1949?

(Whereupon, the paper referred to was produced by the witness.)

Q. I ask you if that paper contains a headline entitled, "Third Kidnapper Captured?"

A. Yes.

Q. And does it contain a subheadline, "National Guard Leaves Groveland?"

A. That's right.

Q. Does it show that article is by Ormond Powers?

A. Yes sir, it does.

Q. Who is Ormond Powers?

A. Reporter for Lake County for the Orlando Evening Star and the Orlando Sentinel Star.

Q. Your special reporter for Lake County?

A. Yes.

Q. And then following that is a column down, the last right-hand column of the newspaper?

A. There is.

Q. I ask you if there are some pictures at the bottom of the front page of the newspaper?

A. Yes.

Q. Pictures of the National Guard in Lake County, on duty in Lake County?

A. Yes.

[fol. 196] Q. I ask you if, in black type, approximately one-fourth of the way down the column, is there a box entitled demonstration," with a question?

A. Yes.

Q. Was this paper about which you have just been testifying a paper published by the Orlando Daily Newspapers?

A. It is.

Q. And the same Orlando Evening Star about which you have quoted the circulation figures?

A. Yes.

Mr. Akerman: We offer in evidence that part of the Orlando Evening Star consisting of the headline, "Third Kidnapper Captured," and the entire last column on the righthand side of the front page and the bottom of the front page of the paper with the exception of the first column on the lefthand side as defendant's exhibit C.

The Court: The same order as in the other.

Mr. Akerman: The same pro-fer, to read into the record.

The Court: The same ruling. Let it be understood each time that he offers to read it.

Mr. Akerman: All right. Will you put that into the record each time?

By Mr. Akerman:

Q. Mr. Medlin, do you have a copy of the Orlando Morning Sentinel for Tuesday morning, July 19th, 1949?

A. Yes.

[fol. 197] Q. Will you hand it to me, please, sir?

(Whereupon, the witness produced the paper.)

Q. I ask you, Mr. Medlin, did that paper contain a headline, "Mob Violence Flares in Lake?"

A. Yes.

Q. Subheadline, "Negro Houses Burned?" "Men to Defy Officers?"

A. Yes.

Q. Does that contain a by line by Ormond Powers?

A. Yes.

Q. Is that the same Ormond Powers you have previously testified to as your special reporter that reports for all three of your newspapers for Lake County?

A. It is.

Q. Does that, following that, is there an article going down the entire righthand column of the front page?

A. Yes.

Q. Is that article continued?

A. It is.

Q. To what page?

A. Page 2.

Q. Will you turn to page 2? And describe the location in the paper where that is?

A. Third column.

Q. Third column in the second page?

A. That's right.

Q. Is that headed, "New Violence In The Groveland Kidnaping Case, continued from page 1?"

A. That's right.

Q. Will you turn back to the front page?—Is there a cartoon appearing on the front page of the paper?

A. Yes.

Q. Is that a cartoon consisting of 4 electric chairs, headed "No Compromise?"

A. "The Supreme Penalty."

[fol. 198] Q. Four electric chairs?

A. Yes.

Q. Who is that cartoon prepared by?

A. By Mr. Lynn Brewton.

Q. Is he the regular front page cartoonist for your paper?

A. He is.

Q. General custom of your papers when Mr. Brewton is there, to run a cartoon each morning. Is that correct?

A. That's right.

Q. In the Orlando Morning Sentinal?

A. Yes.

Mr. Akerman: Defendants offer in evidence that part of the issue of the Orlando Morning Sentinal dated Tuesday, July 19th, 1949, consisting of the headline heretofore described by the business manager of that paper; the cartoon heretofore described, and the news column appearing on the last column on the righthand side of the front page and in the third column of the second page. Said column being written by Ormond Powers, special reporter for the Orlando Daily Newspapers.

By Mr. Hunter:

Q. Does this cartoon referred to by Mr. Akerman bear any names? Mention any names?

A. No sir. There is not any names on it except the cartoonist.

Q. Is that cartoon intended to express a principle behind which this paper stands?

A. I couldn't say on that.

Q. Well don't you think it expressed very strongly the [fol. 199] idea that whoever was guilty of viciously raping

a woman on the public highways of this county should pay the supreme penalty for it?

A. I do.

Q. And don't you think that's right?

A. (Indicated by head) Yes.

The Court: The same ruling on the admission that has been made on the other side.

Mr. Akerman: Just a minute. If I can look at this.

The Court: You had offered it is evidence, as I understood it.

Mr. Akerman: He asked some questions.

(Whereupon, the exhibit was received, the same proffer and ruling made as before.) (Defendant's Ex. D.)

By Mr. Akerman:

Q. Mr. Medlin, do you have a copy of the Orlando Evening Star for the 19th of July, 1949?

A. I do.

Q. May I have that?

A. (Whereupon, the paper was produced by the witness.)

Q. I ask you, does that contain a headline entitled, "Tense Quiet At Groveland"? And a subheadline, "Sheriff Promises to Halt Violence"?

A. Yes sir.

[fol. 200] Q. Does it also, and following that subheadline, have a 2-column story on the righthand side of the front page of the Orlando Evening Star, and then bucking a one column story and going down the entire righthand side of the paper?

A. It does.

Q. I ask you, is there a picture in the middle of the front page of the paper entitled, "Night Riders Burn Lake Negro Homes"?

A. Yes.

Q. And below that picture, another picture consisting of a picture of Groveland Police Chief, George Mays pointing out some clothes that were pierced by bullets fired into the door of a negro honky-tonk. I ask you to turn to the editorial page of the paper, and ask you if there is an editorial appearing in the paper, entitled, "Cool Heads

Needed," with the reference, farther down, to 'smart lawyers,' in it?

A. Yes.

Mr. Akerman: Defendant offers in evidence that part of the issue of the Orlando Evening Star—Just one question.

Q. Is this the same Orlando Evening Star about which you testified concerning its circulation throughout Lake County, Florida?

A. Yes.

Mr. Akerman: Now Defendant offers in evidence that part of the Tuesday afternoon issue, July 19th, 1949, of the Orlando Evening Star, consisting of the headline, "Tense [fol. 201] Quiet at Groveland," Subheadline, "Sheriff Promises to halt Violence," and the story appearing on the—under the headline and subheadline. Also that part of the paper consisting of the 2 pictures appearing on the front page of the paper, one of them entitled, "Night Riders Burn Negro Homes," and the other one, picture, a purported picture of Police Chief George Mays, of Groveland, pointing out where clothes had been pierced by bullets fired into a negro honky-tonk. Also, the editorial appearing on page 4 of the newspaper hereinbefore described by the witness.

By Mr. Hunter:

Q. Do you know how many houses were burned in Lake County?

A. I do not.

Q. Do you know of any others, except this one?

A. I do not.

Q. Do you know where this was?

A. No.

Q. There's nothing in this paper to indicate that colored houses were being burned all over Lake County, was there?

A. I believe not.

Q. Did you ever hear of anything of that kind?

A. No.

Q. This was an isolated instance, then?

A. (Indicating by head) Yes.

Q. Who wrote this editorial?

A. I couldn't answer that. I do not know.

[fol. 202] Q. Mr. Anderson is the editor of the paper?

A. Mr. J. C. Barsier is the editor of the evening paper. He writes the editorials as a rule. I do not say that he wrote that one.

Q. Did you read the editorial?

A. No, I haven't.

Q. Would you please read it? It's headed, "Cool Heads Needed."

(Whereupon, the witness perused the paper.)

Q. Do you subscribe to and believe that the thought in that editorial is correct?

A. I do.

Mr. Akerman: I object to what he subscribes to. Immaterial and irrelevant. Move to strike the answer.

The Court: Well, it is not going to the jury. I don't think it makes a whole lot of difference and I am not going to grant the motion to strike it. Let it go into the record.

Mr. Akerman: Now, you testified as to this editorial. I ask you if the following appears in the editorial: "A few smart lawyers who are agents of different organizations, seek to hamper justice through the employment of legal technicalities. They may bring suffering to many innocent negroes." Does that appear in the editorial?

A. I believe it does. Yes.

[fol. 203] Q. Now you have testified that you subscribe to that. What do you consider legal technicalities?

A. Well, I don't know hardly how to answer that.

Q. Do you consider this hearing a legal technicality?

A. (Indicating by head) No.

Q. Mr. Hunter: He said he didn't know.

A. I say I didn't hardly know how to answer that question.

By Mr. Hunter:

Q. You are not a lawyer?

A. No.

By Mr. Akerman:

Q. But you subscribe to it anyway?

A. (No answer.)

Mr. Akerman: All right. The same proffer.

The Court: The same ruling.
(Exhibit was received as Ex. E.)

By Mr. Akerman:

Q. Do you have with you the issue of the Orlando Morning Sentinel for Wednesday, July 20th?

A. I do.

Q. Will you give it to me, please, sir?

(Whereupon, the witness produced the paper.)

Q. I ask you if there appears on the front page of the issue of the Orlando Morning Sentinel for Wednesday, July 20th, in the second column from the left of the front page, an article entitled "Groveland Under Virtual Martial Law?"

A. Yes.

[fol. 204] Q. Does that column extend the entire front page of the paper?

A. Yes.

Q. I'll ask you if there appears on page 8 of the paper, at the top of the first two columns from the left an article entitled, "Negro Evacuees Sheltered Here"; and in the article, it says, among other things, The negroes have been brought here because of inter-racial tension that has been built up in Lake County following the kidnapping of a 17 year old white woman."

Q. Does that appear?

A. I haven't read the story.

Q. Well will you read it through?

(Witness perused the paper.)

Mr. Hunter: Your Honor, I don't see the necessity to read it.

(Whereupon, it was argued to the Court.)

A. Yes sir. It is.

Q. Is that there?

A. Yes.

Q. And, on page 10 of the same issue of the Orlando Morning Sentinel, I ask you, is that a picture entitled, "Flames From Negro Homes Light Night Sky in Lake County?"

A. Yes sir.

Q. And, a picture of Police Chief George Mays of Grove-

land inspecting, pointing out the bullet wounds in the shirt coming from a bullet fired into a negro honky-tonk?

A. Yes.

Q. Are these papers the same papers you have testified about as to the circulation throughout Lake County, Florida?

A. (Indicating by head) Yes.

[fol. 205] Q. Another picture, "Standing Road guard at Stuckey's still on a weapons carrier with a 50 caliber machine gun mounted are Florida National Guardsmen of the 116th Field Artillery Battalion. The Battalion moved in las. night heavily armed to prevent further violation following outbreak Monday night. Three negro homes were burned here, Monday night."

A. Yes.

Q. And is that the same paper that you have testified about as being published by your corporation for circulation as you have testified in Lake County, Florida?

A. It is.

Mr. Hunter: No objection.

Mr. Akerman: Same proffer.

The Court: The same Order.

(Whereupon, the exhibit was received as Ex. G for defendant.)

Q. Do you have the issue of your Orlando Morning Sentinel for Thursday, the 21st day of July, 1949?

A. Yes.

Q. May I see it, please, sir?

(Witness produced paper.)

Q. Handing you the issue of the Orlando Morning Sentinel, Thursday, July 21, 1949, I ask you if there appears on the front page of that issue a paper entitled, "Lake Jury indicts trio for assault.?"

A. Yes sir.

[fol. 206] Q. That article doesn't say who it was written by. Do you know whether Mr. Ormond Powers wrote that article or not?

A. I do not know.

Q. Following that headline, is an article extending down the second column from the left approximately three fourths of the way of the paper.

A. Yes.

Q. Turning to that article, I ask you if the following appears in there, "March DuBose, first negro to serve on Lake Grand Jury, accepted without protest."

Mr. Hunter: We object to that, if you are going to introduce the paper. It speaks for itself. Just killing time reading from these papers he's reading into evidence.

The Court: You can identify that item without so much dramatics and they don't impress the Court in the least.

Mr. Akerman: Is the objection sustained?

The Court: Objection sustained. Identify the article and then introduce it.

Q. I ask you if, appearing on page 3 of the paper, is a picture that a "Lake County Grand Jury probing in the case?"

A. Yes.

Q. Is this the same Orlando Morning Sentinal about which you have testified as to the circulation throughout Lake County, Florida?

[fol. 207] A. Yes.

Mr. Akerman: Defendant's proffer that part of the paper consisting of the newspaper article headed, "Lake Jury indicts trio for Assault," appearing on page — in the second column on page 1 of said newspaper, and the picture appearing on page 3 of said newspaper.

The Court: The same order.

(Whereupon, the paper was received and marked as Defendant's Exhibit H.)

Q. Do you have the Orlando Evening Star for Thursday, July 21st?

A. Yes.

Q. May I see that, please?

(Witness produced paper.)

Q. I ask you if there is an article appearing in that paper entitled, "Groveland-Tension Simmers?"

A. Yes sir.

Q. Does that appear in the 4th column on the front page of the paper?

A. Yes sir.

Q. The same Orlando Evening Star about which you testified?

A. Yes.

Mr. Akerman: Offered in evidence.

The Court: The same order.

[fol. 208] (Whereupon, the paper referred to was received in evidence as Defendant's Exhibit I.)

Mr. Akerman: If the Court please, if we could have about 5 minutes conference with Mr. Medlin, we can eliminate quite a number of the rest of the issues of his papers and save the time of the Court.

The Court: All right. Take 5 minutes recess.

(The Court then recessed for 5 minutes, at the end of which time, the Court took further recess until 1 o'clock, PM, at which time, the following proceedings were had:) (Mr. Wood reporting.)

[fol. 209]

August 30, 1949

CHARLES MEDLIN, further testified on direct examination as follows:

By Mr. Akerman:

Q. Mr. Medlin I hand you herewith Orlando Morning Sentinel of Friday, July 22nd, and ask you if an article appears on the front page in next to the last column at the right hand side entitled "Troops remain at Groveland?"

A. Yes, sir.

Q. Is this the same Orlando Morning Sentinel that you testified to with reference to circulation in Lake County?

A. Yes.

Mr. Akerman. Defendants offer in evidence that part of the Orlando Morning Sentinel of Friday, July 22nd, identified by the witness, being next to the last column, next to the last right hand column, on page one of the newspaper.

Mr. Hunter. May I ask a question? Is it the intention of counsel to introduce only articles that refer to this particular case?

Mr. Akerman. Yes, sir.

Q. Is it your intention to introduce all articles in the newspapers you have that refer to this case?

A. Yes, sir. We have gone through them, and picked out the one with such articles in them.

Q. That is your intention?

A. Yes, sir. We may have overlooked one or two. We went through them at noon and picked them out.

Q. You intend to introduce everything that has reference to this particular case, is that right?

A. That is right.

The Court. The article is admitted with the same proffer [fol. 210] visions made before noon, that a copy be obtained and substituted for the original.

Article filed in evidence as Defendants Exhibit J.

Mr. Akerman. Same proffer.

By Mr. Akerman:

Q. Mr. Medlin I hand you herewith issue of the Orlando Morning Sentinel for Saturday, July 23rd, 1949, and ask you to turn to page seven and see if there is an article entitled "McCall reports all quiet in Groveland"?

A. Yes, sir.

Q. Does that article appear on page seven of the July 23rd issue of the Orlando Morning Sentinel, being the top three columns in the middle of the page, being the top three columns of page seven?

A. Yes, sir.

Mr. Akerman. We offer that in evidence as Defendants' Exhibit K.

The Court. Same ruling.

Mr. Akerman. Same proffer.

Mr. Hunter. While I have it on my mind, I think it probably has not been done, I would like for the record to show that the defendants are all in court during this entire proceeding today.

Q. Mr. Medlin I hand you the issue of the Orlando Morning Sentinel of Wednesday, July 27th, and ask you if an article appears in next to the last column on the front of the page entitled "Negro attack suspect killed"?

A. Yes.

Q. That was published in the Orlando Morning Sentinel of that date?

A. Yes.

Q. Is that the same Orlando Morning Sentinel that you [fol. 211] testified as to the circulation of in and throughout Lake County, Florida?

A. Yes, sir.

Mr. Akerman: We offer in evidence that part of the Orlando Morning Sentinel of Wednesday, July 27th, consisting of an article headed "Negro attack suspect killed" and appearing in next to the last column on the right hand side, front page, as Defendants' Exhibit L.

The Court: Same ruling.

Q. I hand you an issue of the Orlando Evening Star for July 27th, 1949, and ask you to look at the third column and say if there is an article there entitled "Negro killed"?

A. Yes.

Q. Is that the same Orlando Evening Star that you have testified to concerning its circulation in and throughout Lake County, Florida?

A. Yes, sir.

Q. That article did appear in it?

A. Yes, sir.

Q. In this issue of July 27th 1949?

A. Yes, sir.

Mr. Akerman: We offer this article in evidence as Defendants' Exhibit M.

The Court: Same order.

Mr. Akerman: Same proffer.

Mr. Hunter: It seems to me that this method of introducing these papers is simply in line with the statement I made this morning, that the defendants' attorneys intend to kill time here as long as they can, to reach beyond Thursday, on account of the trial of this case being set for that [fol. 212] day. These papers all identify themselves, the heading of the papers and the articles. If he wishes he can ask this witness to identify the paper itself. That is simply a method of killing time. I just make that observation for the record.

Mr. Akerman: I would like to make an observation for the record. I am attempting to the limits of my power to defend these defendants as an attorney and officer of this court, and in both motions, for continuance and for removal of the cause we have alleged wide spread newspaper publicity in and throughout Lake County, Florida, and I know of no other proper way to prove those allegations. They have been denied by the State. Our motion was filed in good faith.

The Court: I think you are probably taking up more time in questioning the witness than is necessary, but I am

not going to hold it down on you further than I have so far. Go ahead.

Q. I hand you herewith, Mr. Medlin, copy of Orlando Morning Sentinel of Saturday, August 13th, and ask you to look at page five, next to the last column, and state if there is an article entitled "Trial scheduled in attack case"?

A. There is.

Q. Is that the same Orlando Morning Sentinel that you have testified to concerning its circulation in and throughout Lake County, Florida?

A. Yes, sir.

Q. Does that appear in this paper as of Saturday, August 13, 1949?

A. Yes, sir.

Mr. Akerman: We offer this article in evidence as Defendants' Exhibit N.

The Court: Same ruling.

[fol. 213] Q. I hand you herewith copy of the Orlando Sentinel Star of Sunday, August 14, 1949, and ask you to look at page seven, and ask you if there is an article appearing in the top of the page entitled "McCall says beating charge damn lie"?

A. Yes, sir.

Q. Is that the same Sentinel Star that you testified to concerning its circulation in and throughout Lake County, Florida?

A. Yes, sir.

Q. Did that article appear in this paper?

A. Yes, sir.

Mr. Akerman: We offer this article in evidence as Defendants' Exhibit O.

The Court: Same ruling.

Mr. Akerman: Same proffer.

Q. Mr. Medlin how long has the Orlando Morning Sentinel been published?

A. As the Orlando Morning Sentinel I couldn't give the exact date on that, but a number of years.

Q. Does it enjoy the reputation of one of the leading newspapers throughout Central Florida?

A. Yes, sir.

Q. How about the Orlando Evening Star?

A. Same thing.

Q. Was the Orlando Evening Star published formerly under the name of Orlando Reporter Star?

A. Yes, sir.

Q. And for many years it has circulated throughout Florida?

A. Yes, sir.

Q. And has enjoyed the reputation of being one of the leading newspapers in Florida?

[fol. 214] A. Yes, sir.

Q. Mr. Medlin were you in Orlando, Orange County, Florida, on last Friday, Saturday and Sunday?

A. Friday and Saturday, yes, sir.

Q. Did you have a tropical disturbance there?

A. We had quite a bit of wind.

Q. And it did quite a bit of damage?

A. Yes, sir.

Q. Did it blow down quite a number of trees in the City of Orlando?

A. Some, yes, sir.

Q. Do you remember about how long the wind blew at fifty miles an hour?

A. No, sir.

Q. Do you have any idea?

A. No, sir.

Mr. Akerman: No further questions.

Mr. Hunter: No questions.

HARRY E. GAYLORD, being first duly sworn, testified as follows:

Direct examination.

By Alex Akerman, Jr.:

Q. State your name please?

A. Harry E. Gaylord.

Q. Your profession?

A. Attorney at law.

Q. How long have you practiced?

A. Thirteen years.

Q. In Lake County, Florida?

A. In Lake County, Florida.

Q. Were you appointed by the Court as defense counsel [fol. 215] set in this case?

A. I was.

Q. After the arraignment in this case did you come to my office?

A. I did.

Q. Did you discuss with me whether or not I was going to appear as defense counsel?

A. I did.

Q. What did I tell you at that time?

A. You said no.

Q. Did I tell you what the situation was?

A. Yes, sir.

Q. Did I tell you I didn't want to take the case?

A. Yes, sir.

Q. Did I tell you I would take it only in the event they were unable to employ other counsel?

A. Yes, sir.

Q. Did you go with me to Daytona Beach to discuss the matter of employing other counsel with Horace Hill?

A. I did.

Q. Did you at a later date meet Franklin Williams, an attorney of New York?

A. I did.

Q. Are you familiar with the efforts, or some of the efforts we went to to obtain defense counsel?

A. I am.

Q. Will you kindly state what you know of our efforts to obtain defense counsel?

A. I told Mr. Akerman that if counsel was to appear for the defendants that I was withdrawing from the case, but if they didn't have other counsel I would defend them to [fol. 216] the best of my ability. I learned that a colored lawyer by the name of Fordham, of Tampa, Mr. Akerman, Horace Hill and Franklin Williams had been contacting counsel and had employed counsel for the defendants. When I met with Mr. Akerman and Horace Hill I made the same statement, that if they were going to get counsel I wanted to know it, because I would have to make preparation for the trial of the case. Williams asked me if I would be employed by the NAACP, or the defendants, to try the case. I told him no, under no circumstances, for no amount

of money; that I had been appointed by the court and that I would defend the defendants to the best of my ability as the court appointed attorney, but I didn't care to be employed by any outside source. He told me he thought an attorney in Polk County was going to handle the case, and that he was going down to see him, and in a few days he would let me know if he was going to handle the case. A few days later he told me that attorney was not going to handle it. He showed me a list of eleven or twelve attorneys he had contacted concerning the case, and none of them would handle it. A week ago last Monday I contacted Horace Hill and asked him if they had secured counsel, that I had to know. He said there had been an attorney in Daytona Beach contacted and they thought he was going to represent them. He gave me his name and I went to see him. He told me the night before he had decided not to enter the case, and he was not going to appear as counsel. I informed Hill and Williams of that and Williams called another attorney on the telephone, and when he told him he would not handle the case Williams said he was going to see Mr. Akerman again concerning it, and I was present when he saw Mr. Akerman, and Mr. Akerman at first said he wouldn't take the case because of the circumstances involved, and public opinion, but at last he said he would try [fol. 217] the case. I then told him I would withdraw from the case and he could enter his appearance as attorney.

Q. You know considerable of the efforts that were made to obtain counsel?

A. Yes, sir.

Q. I believe you said you talked with one of the attorneys at Daytona Beach?

A. That is right.

Q. And you were informed at first that he would take it?

A. Yes, sir.

Q. What did he say about it?

A. He said he thought it over at night and discussed it with his wife and decided not to take it.

Q. You came with them over to my office?

A. Yes, sir.

Q. About what time did you arrive there as well as you remember?

A. A week ago last Monday night.

Q. Late in the afternoon?

A. Yes, sir.

Q. We had considerable discussion did we not?

A. Yes, sir. From about four o'clock until six-thirty.

Q. As a matter of fact your wife was waiting for you to take her to supper, and you had to call her over the phone did you not?

A. Yes, sir.

Q. And finally your arrangements were made around seven or eight o'clock?

A. That is right.

[fol. 218] Q. When were you first called in as defense counsel?

A. Friday, August 12th.

Q. Was it your understanding by the arraignment that they were going to waive any rights they had prior to the arraignment?

A. I didn't discuss it with them.

Q. What was your understanding about that?

A. They gave me to understand they had not definitely employed counsel. Greenlee's father told me he thought Fordham of Tampa was going to represent his son, and I told Greenlee's father, and each of the defendants, that if they secured other counsel I would withdraw from the case, and they could have whoever they wanted.

Q. Do you remember the discussion with me and that I raised the question of filing motions?

A. Yes, sir. You asked me concerning a motion for change of venue. I didn't raise the question because I thought no change of venue was necessary.

Cross-examination.

By J. W. Hunter:

Q. You say you told Mr. Akerman you didn't think any change of venue was necessary in this case?

A. That is true.

Q. You live in this county?

A. Yes, sir.

Q. Knowing what you do you thought these men could get a fair and impartial trial here?

A. Yes, sir. I told Mr. Akerman that I knew of my own knowledge there had been a colored man on the grand jury, and of my own knowledge knew that for several years colored men had been in the box, and I didn't feel that the

disturbance that had occurred at Groveland would effect the trial; that we has always had good jurors in Lake [fol. 219] County.

Q. Where do you live?

A. Eustis.

Q. Did the people there know of this disturbance that was going on down at Groveland?

A. I knew of it.

Q. Was there any rioting or burning of buildings in Eustis?

A. No, sir.

Q. Did you hear of any widespread prejudice against the colored race there which would prevent them from getting a fair trial?

A. No, sir.

Q. Did you ever hear anything like that in Lake County?

A. No, sir.

Q. It is your opinion now that they can get a fair — in this county?

A. That is the reason I wouldn't ask for a change of venue.

Q. That is still your opinion?

A. Yes, sir.

Q. You would have done anything you thought proper in the defense of these men?

A. Yes, sir. I didn't solicit the appointment. In fact I was on my vacation when I was notified of the appointment, and I told every person who asked me about the employment that being an officer of the court, having been appointed by the court, I would do everything in my power to see that they got a fair and impartial trial, and I was going about the business of seeing they did get that.

[fol. 220] Q. You say you negotiated here with a man by the name of Williams?

A. That is right.

Q. And he was trying to employ an attorney?

A. Yes, sir.

Q. Did you know in whose behalf he was trying to employ an attorney?

A. No, sir. He told me he had talked with the defendants at Raiford, and had talked with several attorneys concerning the case, and asked me if I would consider being employed?

Q. Did he tell you who he represented?

A. I learned from the Pittsburgh Courier that it was the National Association for the Advancement of Colored people.

Q. Did you know when you talked with Mr. Akerman, and he hesitated about taking the case, whether he had taken other suits in Florida from that same association or not?

A. I know he had handled the University of Florida case, for entrance in the college.

Q. For the entrance of colored students in the College at Gainesville?

A. Yes, sir. I didn't know he was representing the National Association for the Advancement of Colored People, but I did know he represented the colored students who had applied for entrance, from reading the Orlando Sentinel Star.

Q. It is in this record that Franklin H. Williams was representing the National Association for the Advancement of Colored People, that is in the record here—Now Williams was the man who tried to employ you was he not?

A. Yes, sir.

Q. And he was the man who tried to employ Mr. Akerman [fol. 221] was he not?

A. That is right.

Re-direct examination.

By Mr. Akerman:

Q. You are familiar with the purported confessions are you not?

A. I am.

Q. And the publicity that has been given them?

A. I am.

Q. Do you believe that it is possible for any person who has read those purported confessions to completely erase them from his mind and act on the jury?

A. Do you mean the newspaper account of the confession?

Q. I mean if he is asked questions concerning the excitement, any juror who has been informed and believes the defendants have confessed the crime, do you think it is possible for them to erase that from their minds, assuming the confessions are not admissible or not introduced in

evidence, is it possible for them to erase it from their minds, or would they consider it in connection with the case?

A. That will depend on the individual juror.

Q. It would be practically impossible to erase something like that from their minds, would it not?

A. Well that would depend on the individual juror, the question of getting a jury.

Q. There has been quite wide spread publicity throughout Lake County that they confessed has there not?

A. Yes, sir.

Q. You didn't go down to Groveland?

A. No, sir.

Q. You were not over in Tavares right after they were [fol. 222] arrested?

A. No, sir.

Re-cross examination.

By J. W. Hunter:

Q. Do you think it would be impossible to get a jury in this county, or that there would be any trouble getting a jury in this county to try this case on account of what they had heard or read in the newspapers?

A. I felt I could get a proper jury if I had tried the case, or get a better jury in Lake County than in any other county.

Q. Do you still think that?

A. Yes, sir.

Re-direct examination.

By Alex Akerman, Jr.:

Q. Didn't you tell me it might take two weeks to get a jury?

A. I did tell you that, to get one that you felt would fairly and impartially try it.

Re-cross examination.

By J. W. Hunter.

Q. That is just a guess?

A. Yes, sir.

DR. NELSON W. V. SPAULDING, being first duly sworn, testified as follows;

Direct-examination.

By Franklin H. Williams:

- Q. Where do you reside?
 A. Jacksonville, Florida.
 Q. Have you been admitted by the State of Florida to practice medicine in this state?
 A. I have.
 Q. You are a medical doctor?
 [fol. 223] A. I am a medical doctor.
 Q. Where is your office?
 A. 805 Broad Street, Jacksonville, Florida.
 Q. Do you have a pre-medical degree?
 A. Yes, I do, Bachelor of Science.
 Q. What University?
 A. Xavier University, New Orleans, Louisiana.
 Q. Is that an accredited institution?
 A. It is, yes.
 Q. Do you have any other degree?
 A. Yes. Doctor of Medicine.
 Q. Where did you obtain that degree?
 A. Howard University, Washington, D. C.
 Q. Is that an accredited Medical College?
 A. It is.
 Q. Did you serve any internship?
 A. Yes I did.
 Q. How long and where?
 A. I served nine months, rotating internship, in Kansas City General Hospital, #2, Kansas City, Missouri.
 Q. Did you serve as resident anywhere?
 A. I served nine months at Brewster Hospital, Jacksonville, Florida.
 Q. When was the first time you saw me Doctor?
 A. This morning when I came in this court room.
 Q. When was the first time you saw Mr. Akerman?
 A. When I walked in this court room this morning.
 Q. And Mr. Price sitting behind me?
 A. This morning was the first time I have seen him.
 Q. Dr. Spaulding have you ever seen the defendants in this case, Samuel Sheppard; Walter L. Irvin and Charles Greenlee?

[fol. 224] A. Yes, sir, I have.

Q. On what date and where?

A. I saw them on August 7, 1949, at Raiford State Penitentiary.

Q. How did you happen to go to Raiford to see the defendants?

A. Attorney Horace Hill called me and asked would I go up and examine these men.

Q. Did you examine them?

A. I did.

Q. What did your examination consist of?

Mr. Hunter: I object to that as being totally irrelevant and immaterial. It has no connection whatever with this case.

The Court: The objection is sustained. It has nothing to do with these motions.

Mr. Akerman: At this time, may it please the Court, the defendants make a proffer of proof by this witness. It is the intention of the defendants to prove by this witness that he in his capacity—

The Court: That has all been gone over. There is no use to encumber the record with it any further.

Mr. Akerman: Is it the ruling of the Court that we cannot make a proffer of the proof?

The Court: You have already offered the proof.

ORMOND POWERS, being first duly sworn, testified as follows:—

Direct-examination.

By Alex Akerman Jr.:

Q. State your name please sir?

A. Ormond Powers.

Q. Where do you live?

A. Leesburg.

[fol. 225] Q. What is your business or profession?

A. Newspaper Reporter.

Q. For who?

A. Orlando Sentinel Star.

Q. The morning paper is called the Orlando Morning Sentinel, the afternoon paper the Orlando Evening Star,

and the Sunday paper the Orlando Sentinel-Star, do you report for all of them?

A. Yes, sir.

Q. Were you reporting for them during the months of July and August 1949?

A. Yes.

Q. You work for them in Lake County?

A. Yes.

Q. Did you in connection with your business investigate and report to them on the case now pending before this court?

A. Yes.

Q. Did you write the article which is in the issue of July 17th, which has been filed in evidence as Defendants' Exhibit A?

A. Yes, I did.

Q. In that article, quote: "We will wait and see what the law does, and if the law doesn't do right then we will do it, was the opinion of many outraged citizens"?

A. That is correct.

Q. You reported that?

A. Yes, sir.

Q. What was the basis of that report?

A. Times were pretty high, or it was pretty obvious it was. I got that from white people. I don't know their [fol. 226] names. I would tell if I knew, but I don't know them.

Q. Did you write the article which appears in Defendants' Exhibit B?

A. Well, strictly I didn't write that, but I telephoned the information in. It was written in the main office.

Q. Was this article written on the basis of information you received and reported to the paper?

A. Yes, sir. And probably information furnished by other people as well.

Q. Did you report to them the following: "The town was quiet last night, but Saturday night and early Sunday morning at times it was to the breaking point when angry mobs of men when in search of the negroes who had been arrested?"

A. Those are not my exact words, no. I think they have been colored somewhat.

Q. Did you report that information?

A. I did, or some of it.

Q. Where did you receive that information?

A. It was common knowledge.

Q. Did you talk to the sheriff about it?

A. Yes, sir.

Q. Did he tell you about it?

A. Yes, sir.

Q. Do you recall whether that information came from him?

A. A delegation called on the sheriff. That is correct. I don't recall whether the sheriff told me there were a hundred men, or whether that came from somebody else.

Q. Does that article reflect a report of what you had ascertained?

A. Yes; sir, not all of the information, of course, came [fol. 227] from official sources. In a matter of that kind you take what you can get.

Q. Now this: "Unappeased, however, the group returned to Groveland where they toured the negro section and stopped in front of a cafe said to be owned by the father of one of the suspects, and they drew their guns and fired into the building. The mob then speeded away and stopped in front of a negro dwelling in the southwest part of Groveland"—

The Court: Hand the article to Mr. Powers and let him state what part of it is based on information he sent in.

Q. Is that article as you read it substantially what you saw and learned in connection with your investigation and your report to the paper?

A. Yes, that is correct.

Q. I hand you Defendants' Exhibit C and ask you to glance through that?

A. This is based on information I telephoned to the newspaper.

Q. Is Exhibit D the same?

A. Yes, sir.

Q. Exhibit E?

A. Yes, sir.

Q. Were you present when the pictures were taken, in Exhibit E?

A. Yes, I was. I didn't actually take the pictures.

Q. Did you see the building that was burned down there?

A. Yes, sir.

Q. Did you see anything else denoting violence or lawlessness—did you see any shooting?

A. Yes.

[fol. 228] Q. Tell us about those, tell what you saw?

A. It was an orderly sort of disorder. Actually the men toured the City of Groveland in automobiles. They were not masked. They were not intoxicated I would say. They drove through the negro quarters and stopped at the edge of the quarters in Groveland, and I would say about six men got out of the cars and formed a distance of ten or fifteen feet from a small cafe, the Blue Flame, I believe it is called, and fired at the rear door of the building. My impression was that they made no real effort to injure any one.

Q. Did you see any negroes around at that time?

A. No, sir.

Q. Did you investigate where they had gone?

A. Yes.

Q. What did you find?

A. That they had been removed to Lakeland and Orlando, by white citizens of the town who did this to prevent an incident. The white people were quite concerned because they felt trouble makers might come into the county from other counties and use this incident as a basis for real trouble. I personally saw many cars from Orange and Polk counties in Groveland during the tension, and I came to the belief that they would plan a parade, or demonstration of some nature. Getting back to the shooting—they fired I would estimate eight or ten shots into this cafe. Then they got in their cars and went to the south part of town, then they went west and had a conference for a few minutes, and I lost them somewhere out there. I couldn't keep up with them, but I understood they fired into another negro dwelling presumed to be the home of the Shepard boy's father. No one was injured there. Actually not much damage was done to the house.

[fol. 229] Q. Did you see the burning houses?

A. Yes, sir.

Q. Tell how many houses were burned?

A. Three houses.

Q. Had they burned when you arrived at the scene?

A. They were burning.

Q. Did anybody try to put the fire out?

A. No, sir. We saw they were burning, and that they

would continue to burn, and there wasn't any hope of saving them, so we drove on.

Q. Do you know of your own knowledge whether they completely burned?

A. I would say so, except the foundations. They had concrete block foundations.

Q. Here is a statement in here: "Situation cooled off, but quickly flared up after the houses were destroyed, one being the home said to belong to the father of one of the suspects," do you recall where you got that information?

A. No, I don't. I do believe that was incorrect, though. I think it was later changed.

Q. I ask you to take a look at Defendants' Exhibit F. Is that a true report of what you found?

A. Yes, sir.

Q. And G?

A. Yes, sir.

Q. H?

A. Yes, sir.

Q. In Exhibit H you have reported "March DeBose—first negro to serve on jury without protest," where did you get that information?

A. From Mr. Hunter.

Q. Did Mr. Hunter tell you he was the first negro to [fol. 230] serve on a grand jury in Lake County?

A. On a grand jury, yes, sir; not an ordinary jury.

Q. Look at Defendants' Exhibit I?

A. This is an Associated Press story.

Q. You didn't have anything to do with that?

A. No, sir.

Q. This is a special story, Defendants' Exhibit J, is that yours?

A. Yes, sir.

Q. Does that truly report the conditions in Lake County as you found them?

A. Yes.

Q. Defendants' Exhibit K, does that report the correct conditions in Lake County as you found them?

A. Yes, sir.

Q. Does Defendants' Exhibit N correctly report the conditions in Lake County as you found them?

A. Yes.

Q. Is O the same?

A. Yes.

Q. Did Mr. Willis McCall, Sheriff of Lake County, inform you that all of the defendants had confessed?

A. Yes.

Q. You reported that?

A. Yes.

Q. That was common knowledge in Lake County as far as you know?

A. I would think so if people had read it in the newspapers.

Mr. Akerman: No further questions.

Cross-examination.

By J. W. Hunter:

Q. In the issue of July 17th you are reported to have [fol. 231] said that someone told you: "We will wait to see what the law does, and if the law doesn't do right we will do it." Is there any reason for anybody doing anything now since the court has taken this matter up?

A. No, sir. I don't think so. I think that the situation has cooled off.

Q. In the questions Mr. Akerman asked you he used these words "conditions in Lake County at that time," did you notice that?

A. No, sir. I missed that.

Q. He asked you that every time, and you said "yes" did you not?

A. No, sir, actually not. I am sorry. I should have said "conditions in one area of Lake County."

Q. How large an area in Lake County?

A. Five miles square, or less possibly.

Q. Would you say there were any conditions of that kind in any other section of Lake County?

A. No, sir.

Q. Was there any hysteria, prejudice or ill feeling toward the negroes exhibited in this county outside of that small area down there?

A. No, sir. Not a bit.

Q. These conditions they have been trying to prove here were conditions that existed only there near where this tragedy took place?

A. Yes, sir.

Q. And didn't affect the balance of Lake County?

A. No.

Q. There was no rioting, burning of houses, or prejudice shown in the City of Leesburg against colored people?

[fol. 232] A. No, sir.

Q. Or any where else in this county that you knew of?

A. No, sir. We checked it and didn't find any evidence of it at all.

Q. As a matter of fact are not the respectable white people in Groveland themselves undertaking to protect these negroes?

A. Yes. They had a volunteer citizen's committee, I guess a good many of them I could name to you, to take the negroes to other places for safe keeping, and they patrolled the negro quarters, actually patrolled the quarters themselves, and put on extra policemen.

Q. The white people did that?

A. Yes, sir, the white people. And they stayed up all night trying to prevent trouble.

Q. How long did that disturbance you are talking about last down there?

A. By that you mean the tension?

Q. The actual disturbance, or disorder?

A. Saturday night and Monday night.

Q. After that things quieted off?

A. Yes, sir.

Q. The men who engaged in that disorder on Saturday night and Monday night, were they respectable citizens of Lake County?

A. Well, I don't know them very well, Mr. Hunter. I wouldn't say. I hardly know how to answer that question. I wouldn't say they were people who are generally known in the county to be active in civic affairs and things of that nature. I think most of them were farmers who wouldn't have time for those things.

[fol. 233] Q. In that particular section?

A. Yes, sir.

Q. Were many of them actually active?

A. I would say three or four.

Q. Three or four men?

A. Three or four were the leaders, and the others followers.

Q. Did you notice whether or not they undertook to hurt anybody, or kill anybody, or anything of that kind, in the neighborhood you mentioned?

A. No one was injured, no, sir.

Q. Were you there the night they caught a drunken white man and brought him into Groveland? And a colored man?

A. Yes.

Q. Tell us about that?

A. Well two men from Clermont, as I understand it, had been drinking and they brought a negro into Groveland and parked their car on the main street and left the negro alone, and passed the word up and down the street that the negro was armed and they defied anybody to try to take him.

Q. Was there a big crowd there?

A. Yes, sir.

Q. Did anybody undertake to lynch him?

A. No, sir.

Q. What did they do?

A. They watched him and arrested the two white men.

Q. Did they put them in jail?

A. Yes, sir.

Q. If there had been any disposition there to lynch any one they could not have had a better opportunity to do it than that could they?

[fol. 234] Mr. Akerman: I object to that question.

The Court: The objection is sustained.

Q. No effort was made at all to harm the negro?

A. No, sir.

Q. You say there — two buildings that were fired into, one of them was Thomas' building, the father of one of the men in Groveland, is that correct?

A. That was the only one in that section.

Q. Were there other colored buildings in there?

A. Yes, sir, a good many.

Q. That is a big settlement down there?

A. Yes, sir.

Q. Were any of their buildings burned or anything done to them?

A. No, sir.

Q. How many buildings were burned in the Groveland section and the Mascotte section?

A. Three in that area.

Q. One belonged to Sheppard, the father of one of the defendants, did it not?

A. I am not sure Mr. Hunter. I heard it did, and I heard later that he rented it.

Q. The other two, who did they belong to?

A. George Valree, was my understanding.

Q. Did he have any connection with the defendants in any way?

A. Not that I know of, no, sir.

Q. Wasn't he what is known as a Voodoo Doctor, and just as offensive to the colored people there as to the white people?

A. On the basis of what I found out about him he was [fol. 235] consulted by a good many white and colored people for his mystical power, and I understood he had been engaged in some sort of activity like Bolshevism, and I also understood he was a wealthy negro. I think he was resented.

Q. By white and colored?

A. Yes, sir.

Q. How long have you lived in Lake County?

A. Sixteen years.

Q. Being a newspaper man you are pretty well acquainted with this county?

A. Yes, sir.

Q. What is your opinion about the relations between colored people and white people in this county, is it good or bad?

A. Good.

Q. It is exceptionally good isn't it?

A. Exceptionally good for the south, yes, sir.

Redirect examination.

By Alex Akerman, Jr.:

Q. You have described an area about how wide?

A. I said five square miles. That takes in Groveland and Mascotte pretty well. That was where the trouble was.

Q. How far is Tavares?

A. Twenty miles from Groveland.

Q. There was trouble in Tavares wasn't there?

A. Not directly. They had to leave Groveland to get here.

Q. You told me about a white citizens' protective league?

A. It was some kind of committee. I don't think it had a name.

[fol. 236] Q. A group of white citizens of Groveland area banded together, what did they do?

A. They first removed all of the negroes.

Q. From the area?

A. Yes, sir.

Q. From what you found out it was the opinion of the substantial white citizens of Groveland that the negroes had better leave that area?

A. Temporarily at least.

Q. They were the substantial leading white citizens of the community?

A. Yes, sir. The very biggest men there.

Q. They gave them transportation, trucks, etc. to get them out?

A. Yes, sir.

Q. Did they give them protection? Do you know whether they put armed guards around them?

A. I don't think they did.

Q. Isn't it true that the guards protected them?

A. They protected the quarters. It is true that they had special armed policemen patrolling the quarters day and night. That is the only thing I know about guards.

Q. Who was this Voodoo man?

A. George Valree. He was reported to have been connected with Bolshevism. That was the rumor.

Q. That was the reason people didn't like him?

A. I don't know why they didn't like him.

— In order to get this area a little better tied down, can you give another description of it, give a boundary or something, so we will know what you are talking about?

A. I would say Mascotte and the immediate area of [fol. 237] Sturkeys Still.

Q. Where is that?

A. Several miles west of Groveland, a colored settlement.

Q. Was there some trouble there?

A. Some, yes, sir.

Q. Describe the nature of that?

A. Well a group of men, estimated at about thirty five or forty, white men, collected there one evening and said they were going to destroy Sturkeys Still. The Sheriff, who was there, told them he would not permit it—that was Sheriff McCall—and he threw tear gas bombs in their midst. He did it with very little help, and did it expertly. This occurred in the Sturkeys Still area. They had fired a

few rounds at a building before the sheriff arrived. In all I understand he fired two tear gas bombs in the crowd, and told them he wasn't going to permit an exhibition that night, and finally persuaded them to go home. I may be a little confused on my time, but by mutual consent the National Guard retired, and also later in the event the group of men retired and went home, and the National Guard went home to prevent an incident. I hope that answers your question.

Q. Do you remember about what night that was?

A. Monday night, the 18th.

Q. Was that the first time the National Guard appeared on the scene?

A. No, sir. They were there the night of the 17th.

Q. How many National Guardsmen were there?

A. About seventeen Sunday night, and about twenty Monday night.

Q. They were the local National Guardsmen?

A. Leesburg and Eustis.

[fol. 238] Q. After that time were other National Guards present?

A. Yes, sir, Tuesday afternoon. The Eustis Company.

Q. Do you remember what date that was?

A. That would be the 19th. They were relieved the night of the 19th by a Battalion from the Tampa area of 300 men. They arrived with heavy artillery. They stayed until the following Sunday. I don't recall the date.

Q. Do you recall where they were stationed in Lake County?

A. Clermont, Groveland and Mascotte.

Q. Is that the area you have described?

A. Not actually. I never figured Clermont in the troubled area, because I don't think it deserves to be, but because of another incident in Clermont in which a drunk white man threatened to do harm they placed an attachment of the National Guard there.

Q. Do you recall when the two drunks brought the negro over to Groveland?

A. I am sorry, but I am not sure. It was right at the outset, but I am not sure of the date.

Q. Do you cover all of Lake County?

A. Yes, sir.

Q. Practically everybody in Lake County knows about this case?

A. I think so.

Q. They have talked with you about it?

A. Yes, sir.

Q. It is the general subject of conversation?

A. Not any more.

Q. At the time it was going on?

[fol. 239] A. Yes, sir.

Q. That extended throughout Lake County?

A. Yes, sir.

Q. They asked you questions about it?

A. Yes, sir.

Q. Have you ever discussed the confessions or anything like that?

A. The confessions haven't been referred to much in conversations. I don't think anybody made much point of the confessions.

Re-cross examination.

By J. W. Hunter:

Q. The discussion you heard over the county was that a crime had been committed in the south end of the county.

A. Of course everybody was disturbed by the acts of violence, concerned about it, yes, sir.

Q. Did you find any great prejudice against the colored race in any other parts of the county?

A. No. They thought the crime was a horrible thing, but I don't know that they actually felt it would have been as bad if it had been white people.

Q. Decent people don't like to have their women raped?

A. No, sir.

Q. There was no general feeling against colored people at all?

A. No, sir.

Q. And there isn't yet?

A. I haven't seen any evidence of it, no.

Q. Is that still a topic of conversation in the county?

A. No, sir.

Q. It has all died out?

A. Except for the last day or so when the date for trial [fol. 240] approaches, and things like that.

ALEX AKERMAN, JR., being first duly sworn, testified as follows:

My name is Alex Akerman Jr. I am defense counsel in this case. My reply to statements and inferences of the State Attorney as to my employment by the NAACP, and inferences of other litigation I am handling, I would like to make the statement that this is the first case in which the NAACP is interested which I have defended. The only other representation in any way connected with the NAACP in which I have appeared as counsel was one criminal case in Orange County, in which the National Association had nothing to do, only the local Branch. Any statement that it has anything to do with the cases now pending in which certain negro students are seeking admission to the University of Florida, or equal facilities for them, is entirely unfounded, and has no basis.

Cross-examination.

By J. W. Hunter:

Q. You represent four colored boys who are trying to get in the University of Florida do you not?

A. I represent six.

Q. They are poor people are they?

A. I don't know that they are so very poor.

Q. How many of them are from Marion County?

A. I think three or four of them.

Q. Do you think they are furnishing the money for the handling of the case?

A. My statement was that the NAACP is having nothing to do with the case.

Q. Does the local association have anything to do with it?
[fol. 241] A. Not that I know of.

The Court: I don't think this has anything to do with this case.

MRS. MABEL NORRIS REESE, being first duly sworn, testified as follows:

Direct examination.

By Joseph E. Price:

Q. Mrs. Reese where do you live?

A. Mount Dora.

Q. Are you connected with a newspaper, or one or more newspapers, being published in Mount Dora?

A. My husband and I own the papers.

Q. What is your official capacity?

A. Editor.

Q. What are the names of these newspapers?

A. Mount Dora Topic, Groveland News Topic, and Clermont News Topic.

Q. Do you have your circulation figures in Lake County of these papers?

A. 3600.

Q. Do you have the individual figures of circulation for the three papers?

A. It is about 1500 for the Mount Dora paper, and the balance is in south Lake County.

Q. The balance is divided between the Groveland paper and the Clermont paper?

A. Yes, sir.

Q. Your position is editor of the three publications?

A. Yes, sir.

Q. I hand you a newspaper, The Mount Dora Topic, of Thursday, July 21st, is that one of your papers published on that date?

[fol. 242] A. Yes, sir.

Q. In the last two columns on the right side of the page there is an article which is headed—

The Court: Ask her if the article refers to the alleged crime.

Q. Does this article cover events which happened in connection with this crime?

A. Yes, sir.

Q. Could you tell me who wrote this particular article?

A. I did.

Q. On what did you base the article from the standpoint of information, information you personally gathered?

A. I attended the grand jury hearing.

Q. Was this article based on any other information?

A. Preceding the grand jury investigation I covered the case in south Lake County. However I don't think you will find anything in that article on it. That was up to date at the time I came out with that issue.

Q. You have a statement in this article to the effect that State Attorney, J. W. Hunter, indicated that the trial would be held as speedily as possible and bring to a close mass demonstrations at Groveland, what was the basis for that particular statement?

A. I talked with Mr. Hunter about that.

Q. Are those substantially the words of Mr. Hunter?

A. Yes, sir.

Q. Let me read the article: "The trial, State Attorney Hunter indicated will be held speedily for the purpose of bringing to a close the mass demonstration in Groveland" is that correct?

A. Yes, sir.

Q. On what did you base your idea there was mass demonstration?

A. As I said I had been down in south Lake County prior to the grand jury hearing. However I didn't go into details on that, because the grand jury hearing was new.

Q. When you did go to south Lake County where did you go?

A. Main Street in Groveland.

Q. Did you go any further than the Main Street in Groveland?

A. Not prior to that publication.

Q. There is also a statement in this article that the negro who served on the grand jury was the first negro to serve on a grand jury in Lake County, what was your basis for that statement?

A. Well I think if you will read further there you will see that in the past they had had trouble getting negroes to serve on juries.

Q. Who gave you that particular information?

A. Mr. Hunter.

Q. Did he say for what reason they had not served?

A. That they don't want to serve.

Mr. Price: I would like to offer in evidence the article covering the two right hand columns of the Thursday, July

21st edition of the Mount Dora Topic. This newspaper was circulated under the figures you gave me?

A. The 1500 figures, yes, sir. May I have the paper back?

The Court: A copy of the article will be substituted and the paper returned.

Q. I show you another copy of the Mount Dora Topic of Thursday, July 28th, and particularly in the fourth and fifth columns of that paper there is an article. Would you read the title of that article?

[fol. 244] A. "The true Groveland story to be told in this week's Life", and "Negroes trial now to be set". There is another reference in that paper if you would like for me to find it for you.

Mr. Price: Defendants offer these articles in evidence.

Mr. Hunter: In regard to the back page of the same paper, July 28th, there is an article which begins as follows—

Mr. Price: I object to the State Attorney reading the article.

The Court: The objection is sustained.

Mr. Hunter: I call to your attention to the "News in East Town" and ask you if you are going to introduce that?

Mr. Price: This I believe is a letter, not a regular article in the paper. A letter from some one to the paper.

The Witness: It is a regular by-line column.

Mr. Price: I have no objection to its introduction. I have no desire to introduce it.

The Court: He declines to introduce it. You can introduce it.

Mr. Hunter: The paper of the 28th, under "East Town" you say that is a regular column in your paper each week?

A. Yes, sir.

Q. It is signed by T. M. Thomas, is he a white man or a colored man?

A. A colored man. He has been writing for the paper a number of years.

Mr. Price: Defendants offer in evidence the two articles, columns four and five in the Mount Dora Topic of July 28, 1949, as Defendants' Exhibit Q.

The Court: Same order.

Mr. Price: Same proffer.

[fol. 245] Q. Next I show you a copy of the Mount Dora Topic of August 18, 1949, and call your attention to the two left hand columes, would you kindly read the titles of those two articles?

A. "Surprise witness to be called at Negro trial which opens August 29th". "Drama and Bitter Disappointment fill the atmosphere at this hearing".

Q. May I ask who wrote these articles?

A. I did.

Q. I notice in the latter part of your first columne you say "A hint of man's inhumanity to man", what was the basis of that observation?

A. It is explained a little further on.

Q. Would you mind telling me what your opinion was?

A. I would rather not say what my opinion was.

Q. The words you wrote are your picture of the situation?

A. My impression of it.

Q. You were present at the whole hearing were you not?

A. Yes, sir.

Q. It was your impression that you saw a hint of man's inhumanity to man?

Q. I would rather you would read it—

The Court: The article will speak for itself.

Q. Are there further articles in your paper concerning this particular case?

A. The editorial is in the following issue.

Mr. Price: Defendants offer in evidence the first two columes of the Mount Dora Topic of August 18, 1949, as Defendants' Exhibit R.

The Court: Same ruling.

Mr. Price: Same proffer.

Q. I show you an article in the middle of columne two [fol. 246] of the Clermont News Topic, under date of August 11, 1949, and ask you if this article to which I now refer was written by you?

A. Yes, sir.

Q. You have a statement in your article here: "Hunter said the first negro attorney assigned to the case by the NAACP, William Fordham of Tampa, had dropped out of the case after investigation" what was the basis of the statement that he had been retained by the NAACP—on what information did you base that statement?

A. Well there had been considerable other statements published prior to that in other newspapers, to that effect; that he had been, and Mr. Hunter told me.

Q. You based that statement on articles in other newspapers and on the statement of Mr. Hunter?

A. Yes, sir.

Q. You have another statement here, quoting Mr. Hunter, a statement in the lower part of the article, last paragraph: "Hunter said he was determined that the trial of the three negroes would be conducted without any recurrence of mob violence which followed the arrest of the negroes", did Mr. Hunter at that time tell you there had been mob violence here in Lake County?

A. He didn't tell me at that time no, sir.

Q. Did you base that statement on a statement by Mr. Hunter?

A. I based it on reference to the entire episode. It was much easier to refer to it in simplified terms rather than go into details each time of what happened.

Q. In other words it was your opinion there was mob violence?

A. I never express any opinion in news stories.

[fol. 247] Q. You must have gotten the statement from somewhere; you more or less stated what you wrote to be a fact?

A. What is the point of your question?

Q. I am now going to ask you if there was mob violence in Lake County? You have made the statement that Mr. Hunter said he was determined that the trial of the three negroes would be conducted without re-occurrence of mob violence which followed their arrest?

A. That refers back to other published accounts on the case. I think you have missed a couple of editorials in the first issue.

Q. In other words what made you think there had been mob violence? Was that based on a statement by Mr. Hunter in a complete discussion of the case?

A. Yes I would say it was. I didn't give word for word the account of what Mr. Hunter said about the case.

Q. You gathered those things from what Mr. Hunter related to you, that there had been mob violence?

Mr. Hunter. I object to the question. The article speaks for itself.

The Court. The objection is sustained.

Mr. Price. Defendants offer in evidence the middle part of the second volume of the Clermont News Topic, issue of August 11, 1949, as Defendants' Exhibit S.

The Court. Same ruling.

Mr. Price. Same proffer.

Q. I hand you a copy of the Groveland News Topic dated August 11, 1949, and ask you to look at an article appearing in the second volume, is that your paper?

A. Yes, sir.

Mr. Price. Defendants offer in evidence Groveland News Topic of Thursday, August 11, 1949, second volume, as [fol. 248] Defendants' Exhibit T.

The Court. Same ruling.

Mr. Price. Same proffer.

Q. All of these papers have been circulated under the circulation figures you have previously given?

A. Yes, sir.

Q. I hand you herewith copy of the Mount Dora Topic dated Thursday, August 25, 1949, and call your attention to the two right hand volumes of that publication, those are your articles are they?

A. Yes, sir.

Q. Would you read the title of those articles?

A. "Weapons to be barred from trial". "Women beg for reserved seats at trial".

Q. I ask you if this is your editorial?

A. Yes, sir.

Q. The editorial to which I am presently referring is on page four of this same issue. In this editorial you make this statement: "That is when the court will bring reason into turbulence", just what do you mean by turbulence?

A. To the effect that when it does come to trial, like today, etc. it will be ironed out, cleared up; that is the mob violence that has been referred to.

Mr. Price. Defendants offer in evidence the two right hand volumes of the Mount Dora Topic, issue of Thursday, August 25, 1949, on page four; also the editorial volume of that page, as Defendants' Exhibit U.

The Court. Same ruling.

Mr. Price. Same proffer.

Mr. Price. The defendants also would like to introduce in evidence these same articles which appear in the Clermont News Topic, right hand two columns, and also on page four editorial column, issue of Thursday, August 25, 1949, as Defendants' Exhibit V.

The Court. Same ruling.

Mr. Price. Same proffer.

Mr. Price. Defendants would like to introduce in evidence the same articles which appear in the two right hand columns of the Groveland News Topic, issue of Thursday, August 25, 1949, and also as part of that same exhibit page four, the editorial column, as Defendants' Exhibit W.

The Court. Same ruling.

Mr. Price. Same proffer.

Q. I hand you copy of the Clermont News Topic, dated July 28, 1949, and call your attention to an article appearing in the second and third columns of that publication, first page—is that your article?

A. Yes, sir.

Mr. Price. Defendants offer in evidence columns two and three of the Clermont News Topic, issue of July 28, 1949, as Defendants' Exhibit X.

The Court. Same ruling.

Mr. Price. Same proffer.

Cross-examination.

By J. W. Hunter:

Q. Mrs. Reese how long have you been in Florida?

A. Almost two and a half years.

Q. Where are you from?

A. Akron, Ohio.

Q. As an investigator and reporter, writing for your papers, have you become somewhat acquainted with conditions around Mount Dora and that territory?

A. Yes, sir.

[fol. 250] Q. What would you say the relations are there between white people and colored people?

A. As a matter of fact since I have been in the south I have come to have a better feeling toward the colored race than while I was in the industrial north. I feel there is considerable more satisfaction among the negroes here.

I have made a lot of friends with them. I think they are much happier here.

Q. Their relations with the whites are good?

A. Yes, sir.

Q. When this so-called rioting was going on in south Lake County, did that effect Mount Dora in any way?

A. Not in the least.

Q. Did you find any prejudice over there against the colored race, or any expressed desire of the people over there not to give the colored people fairness because they are colored people?

A. No sir.

Q. Is there any such evidence there now?

A. No, sir. Not at all.

JAMES HERLONG, being first duly sworn, testified as follows:

Direct examination.

By Mr. Akerman:

Q. State your name please sir?

A. James Herlong.

Q. Where do you live?

A. Leesburg.

Q. How long have you lived there?

A. Twenty seven years.

Q. How old are you now?

A. Twenty Seven years. I was born and raised in Lake County, Florida.

Q. What is your business?

[fol. 251] A. Citrus business.

Q. Do you hold any official position with the Florida National Guard?

A. Yes, sir.

Q. What is that position?

A. Commanding Officer of Co. H, 124th Infantry.

Q. From what area does the personnel of Co. H. 124th Infantry come?

A. Leesburg, Lady Lake, Fruitland Park and Okahumpka.

Q. And of what does the company consist, officers and men?

A. At the present time our strength is 53 men and 4 officers.

Q. That is an infantry company?

A. Yes, sir.

Q. What arms does the company usually carry when on duty?

A. That depends on the situation.

Q. What arms to you have issued to your company?

A. We have 75 MM rifles, 81-MM mortars, 30 caliber machine guns, 50 caliber machine guns, rocket launchers, M-1 rifles, carbines and automatic pistols.

Q. How long have you been commanding officer?

A. Since the 14th of February 1949.

Q. Did your company receive any orders, or were you called out on active duty during the month of July 1949?

A. Yes, sir.

Q. State just what orders you received?

A. We received a telephone call from the Governor of Florida, Fuller Warren; that was on the 17th of July at approximately 8:30 in the evening. The order was for me to contact the Sheriff of Lake County, Willis McCall, and [fol. 252] if he needed my services to report to him according to his order.

Q. What did you do?

A. I took steps to muster the company, and made an effort to contact Sheriff McCall, which I did, and at approximately 9:45 we received orders from him to report at Main Street in Groveland, Florida.

Q. What did you do then?

A. I departed from Leesburg and arrived in Groveland at 10:30 P.M. I reported to the Sheriff for orders, and acting upon his orders I distributed my men on either side of the street in Groveland, the main street in Groveland.

Q. You arrived there about 10:30?

A. Yes, sir.

Q. The night of the 17th?

A. Yes, sir.

Q. What did you find on your arrival?

A. Quite a few people, about seventy five or a hundred people in cars and on the side walks, and I immediately surveyed the situation and found practically every one there—in fact I found no one unruly. They were just bystanders looking on.

Q. What did you do then?

A. I remained there until approximately 1:30 A. M., at which time the Sheriff said there would be no further need of us and we were relieved and returned to Leesburg.

Q. What did you do then?

A. On the night of the 18th of July I received another call from the Sheriff of Lake County for us to come to Mascotte, Florida.

Q. Where is Mascotte with relation to Groveland?

A. About three miles to the west.

Q. Go ahead?

A. We cleared through the State Military Department [fol. 253] at St. Augustine and went to Mascotte.

Q. About what time did you arrive there?

A. Around 11:30 P. M.

Q. What did you find then?

A. In the center of Mascotte I estimated there were fifty or seventy five people, at the cross roads there in Mascotte. I reported to the Sheriff again for orders and he told me to remain in Mascotte until he ordered otherwise.

Q. You mean your company?

A. Yes, sir.

Q. Yours was the only company that was out at that time?

A. The only one on the 18th.

Q. Was there another company called out?

A. Yes, sir.

Q. What company was that?

A. Headquarters Company, Third Battalion, 124 Infantry.

Q. Where is that company?

A. Eustis.

Q. Who is the commanding officer of that company?

A. Lt. Paul Hutchins.

Q. Do you know where they were stationed?

A. They were in Groveland with us.

Q. Coming back to the night of the 18th, you were in Mascotte, where you reported to the sheriff, now pick up from there?

A. A short time after we reached Mascotte a group of people there approached me and said they had decided to go home, that there would be no trouble, and they would appreciate it if I would take my unit and leave that there

would be no more trouble, and that they had told the sheriff that. I told the group that under orders from the sheriff [fol. 254] I had to remain, but that I would contact him and see if there had been any change, but that I was staying until he ordered me out. I did contact the sheriff. There was no evidence of any violence there, no violence toward us. ~~This was just a conversation between myself and this group of men.~~ Under the sheriff's order we left Mascotte around 12:15 and went to Groveland, Florida, and remained until approximately 2:30 in the morning. It was very quiet and nothing to do there and again the sheriff said there was no further need of my company and we were dismissed and returned to Leesburg.

Q. Were you called out after that?

A. No, sir.

Q. That finished your service?

A. Yes, sir.

Q. Do you know whether any other troupes, or National Guards were called out after that?

A. It is my understanding that the 116th Field Artillery of Tampa was called.

Q. Do you know when they came?

A. I think the 19th.

Q. What time did you leave on the 18th?

A. Around 2:30 the morning of the 19th.

Q. And it is your understanding that the 116th Field Artillery was called out that night?

A. Yes, sir.

Q. Did you go down to Sturkeys Still?

A. No, sir.

Q. Were you present at the time of the burning of the three negro hives down there?

A. That fire occurred near the same time of our arrival there.

Q. Were they burning when you got there?

[fol. 255] A. Shortly after we got there.

Q. Were you present in Groveland, down in the negro quarters, when some persons fired into the Blue Flame?

A. No, sir.

Q. Do you know when that occurred?

A. Just hearsay. I don't know any of the particulars of it.

Q. Do you know whether guards have been alerted to remain in Lake County in the event they are called out for duty?

A. I received no orders.

Cross-examination.

By J. W. Hunter:

Q. Did you see any necessity for calling the guards down there?

A. There was no violence. We were called down on orders. According to our instructions to prevent any, but there was nothing to prevent, no shooting or anything along that line.

Q. Those people you saw riding up and down the street in automobiles were they doing anything disorderly?

A. I didn't see groups of automobiles. That might have happened before we got there.

Q. Did you ever load your guns while you were down there?

A. Each man had ammunition but never put it in his gun.

Redirect examination.

By Mr. Akerman:

Q. What guns did you carry there?

A. Pistols, carbines and M-1 rifles.

Q. How many men were with you?

A. Twenty-eight men and four officers.

Recross examination.

By J. W. Hunter:

Q. Mr. Herlong in one of the sworn documents in this [fol. 256] case says that at the time the grand jury which found and returned the indictment against these defendants was empaneled that mobs were roaming throughout Lake County, is that true?

A. I didn't hear of any sir, or see any.

Q. And at the time said grand jury was called there was a state of hysteria, prejudice and ill feeling rampant throughout Lake County, is that true?

A. I didn't know the grand jury had been called until it was over.

Q. Was there any trouble in the Town of Leesburg, where you live?

A. No, sir.

Q. Or anywhere else in the county that you know anything about?

A. No, sir.

Q. As a matter of fact, being on the ground, wasn't the worst part of this mob business down there in the newspapers?

A. The newspaper people were a definite hindrance to the situation down there in my opinion.

Redirect examination.

By Mr. Akerman:

Q. When you say it was a hindrance what do you mean?

A. It brought us out for one thing, and they were trying to get pictures, stories and everything.

Q. You might agree with the British system, that it is a good idea not to have reports published?

A. I am not familiar with the British system sir, but when you are called out for military duty you have a job to do, and anybody running around trying to get pictures—in one case the AP man wanted me and another man to pose while he took our pictures.

Q. Newspapers are pretty widely read throughout Lake County are they not?

A. Yes, sir.

[fol. 257] Q. They wanted you to pose for a picture?

A. Yes, sir.

Q. Do you know whether on the 20th of July 1949 the 116th Field Artillery was still on duty in Lake County, Florida?

A. I am not sure whether they were or not.

W. V. Morrow, being first duly sworn, testified as follows:

Q. State your name please sir?

A. W. V. Morrow.

Q. Where do you live?

A. Clermont.

Q. Are you connected with a newspaper at Clermont?

A. Yes, sir, the Clermont Press and the Groveland Press.

Q. What is your capacity on these newspapers?

A. Editor.

Q. I hand you copy of the Groveland Press dated Friday, July 22, 1949, and call your attention to the right hand column, first page, of that publication, an article entitled: "Troups patrol south Lake County", is that your article?

A. Yes, sir.

Q. What is the circulation of your papers?

A. The Clermont Press as near as I can get at it from the postoffice statement, the paid circulation of the Clermont Press was 1300, that was on April 20, 1949. It is somewhat greater now. The Groveland paper was 450. Combined circulation of the two papers 1750.

Q. Is that figure, 1750, according to your last postoffice report?

A. I will take that back. The postoffice statement I have—do you want the circulation within the county?

[fol. 258] Q. Yes, sir.

A. The paid circulation out of town is 433. The present run is 1300; that is the Clermont paper. The Groveland paper is 450, the present run.

Q. Is about all of the circulation confined to this county?

A. Yes, sir. Some to other parts of the country, to winter visitors.

Q. But you would say most of it is here in Lake County?

A. Yes, sir.

Q. Those are in excess at the present time of 1700?

A. Yes, sir. 1750 approximately.

Q. Would that same figure pretty candidly represent the circulation from July 15th until the present time?

A. Yes, sir.

Q. Can you tell me, in this issue of the paper I have referred to, was the writer of the article appearing in the right hand column?

A. I was.

Q. You have made the statement in this article that Sheriff McCall said all three negroes had confessed, and identified the fourth negro for whom intensive search is being conducted", what was the basis of that statement in that article.

A. I think the preceding paragraph explains that. When this thing happened I didn't attempt to dispute the daily papers, but I did attempt to give the people in Clermont and Groveland a weekly resume of what took place, and the information is based on articles in the various daily papers, and personal conversations I had with people generally. That is the policy I followed out, to take the last papers [fol. 259] and if articles appear in those papers that have stood the test two or three days without denial or correction, based on my previous experience as an editor, I assume them to be true. The article you called my attention to appeared to the best of my recollection in a number of daily papers and was not denied for a period of three days. I don't think they were ever denied. The papers I use are: The Tampa Tribune, Orlando Sentinel, Miami Herald and the Associated Press dispatches that went north and came back to us in exchange.

Q. You got the information from reading other papers?

A. Yes, sir, and personal talks with peace officers, citizens, etc. It was based, if my recollection of the thing is correct, on material appearing in other newspapers.

Mr. Akerman: The defendants would like to offer in evidence the right hand column of the Groveland Press, issue of Friday, July 22, 1949, as Defendants' Exhibit Y.

The Court: Same ruling.

Mr. Akerman: Same proffer.

Q. I hand you herewith copy of the Clermont Press and call your attention to the right hand column, is that the same article you have referred to as being in the other paper?

A. Yes, sir.

Mr. Akerman: Defendants offer in evidence the right hand column of the Clermont Press, issue of July 21, 1949, as Defendants' Exhibit Z.

The Court: Same ruling.

Mr. Akerman: Same proffer.

Q. I hand you copy of the Clermont Press, edition of July 28, 1949, and call your attention to an article in the right hand column entitled: "Negro suspect in assault case shot to death. Troops withdrawn". That article does appear in that paper?

[fol. 260] A. Yes, sir.

Mr. Akerman: Defendants offer in evidence the top right hand column of the Clermont Press, edition of Thursday, July 28, 1949, continuing on the last page of that same edition, in the first column, as Defendants' Exhibit AA.

The Court: Same ruling.

Mr. Akerman: Same proffer.

Q. I have a copy of the Clermont Press published Thursday, August 4, 1949, and in the next to right hand column is an article which is continued on page five of that same publication at the foot of column three, does that article appear there?

A. Yes, sir.

Q. Is that your article?

A. Yes, sir.

Q. On page five you have made the statement that the other three negroes *involved* in the crime are in Raiford Prison, would you tell me what you mean by the word *involved*?

Mr. Buie: We object to the question on the ground that it is irrelevant and immaterial.

The Court: The objection is sustained.

Mr. Akerman: Defendants offer in evidence the second from right hand column of the issue of the Clermont Press dated August 4, 1949, the article being continued on page five of the same paper, lower part of column three, as Defendants' Exhibit BB.

The Court: Same ruling.

Mr. Akerman: Same proffer.

Q. I now call your attention to the Clermont Press, issue of Thursday, August 18, 1949, page three of that paper, in the right hand column of that page, an article appears, will you read the title?

[fol. 261] A. Trial of three negroes set for August 29th.

Q. This article was written by you?

A. Yes, sir.

Q. On what information was this article based?

A. From the daily newspaper reports and wire reports.

Q. In other words it was widely mentioned in the newspapers you have referred to before?

A. Yes, sir.

Q. You have made the statement that Sheriff McCall

who saved the three negroes from a mob on the night of July 16th spirited them away, etc., that was gathered from the reports?

A. Yes, sir.

Q. Do you believe that to be a correct representation?

A. Yes, sir.

Q. Did you rely on the newspaper reports which you have received as being correct unless they were corrected in a short period?

A. Yes, sir.

Q. At the time you printed this article you believed that to be a correct representation of the conditions existing in regard to this particular matter at that time—in other words you believed these statements about Sheriff McCall having to spirit the negroes away to prevent serious harm being done to their persons?

Mr. Hunter: I object to the question on the ground that the article speaks for itself, and is rather plain language.

The Court: The objection is sustained.

Mr. Akerman: Defendants offer in evidence the right hand column of page three of the Clermont Press, edition of Thursday, August 18, 1949, as Defendants' Exhibit CC. [fol. 262] The Court: Same ruling.

Mr. Akerman: Same proffer.

Cross-examination.

By J. W. Hunter:

Q. How long have you lived down there at Clermont?

A. As close as I can state—I don't remember the exact date, but this year.

Q. How long have you been editor of the paper?

A. Since the last week in July.

Q. You were editor when this thing happened?

A. Yes, sir.

Q. Was there any rioting in Clermont, or any colored people's houses burned there?

A. I didn't see any or hear of any in Clermont.

Q. How far are you from Groveland?

A. I think six and a half or seven miles.

Q. Everything was peaceable there?

A. Yes, sir. Mrs. Morrow and I drove through there that Sunday night, coming from Cypress Gardens. We cut around there some place.

Q. Did you go through Groveland?

A. No, sir, around Groveland.

Q. Was every thing peaceable?

A. Yes, sir.

Q. No colored people were run out of Clermont, or any homes burned?

A. No, sir, not to my knowledge. I never heard of any.

Q. Everything was peaceable there?

A. Yes, sir.

Q. And it has been that way ever since?

A. Ever since I have been there, to the extent of my observation and knowledge.

[fol. 263] Q. Where are you from?

A. The last place was Buffalo, New York. Almost eight years before 'at I was in the Army of the United States.

Redirect examination.

By Mr. Price:

Q. You say you rode through Clermont?

A. Around Groveland into the Clermont road that cuts off there. I cannot tell what road it is.

Q. Did you go over to Groveland at any time during this period?

A. Yes, sir. I was in Groveland quite a number of times.

Q. Were you there any time around from the 16th to the 19th of July?

A. I was there yes, sir.

Q. Do you recall seeing any negroes there at that time?

A. No, I didn't see any there.

Q. Just from your own personal feeling do you think if you had been a negro yourself, do you think you would have gone over there?

A. I am not able to put myself in a negro's mental process. I don't know just offhand.

Q. On the basis of what you read in other papers, and the situation as you believed it to be, do you think if you were a negro you would have gone over there?

A. I won't answer that. I don't think I should be forced to answer that.

Mr. Hunter: I object to the question.

The Court: You are not required to answer it.

[fol. 264] WILLIE PADGETTE, being first duly sworn, testified as follows:

Direct examination.

By Alex Akerman, Jr.:

Q. State your name?

A. Willie Padgette.

Q. Where do you live?

A. Groveland.

Q. Within the Town of Groveland?

A. No, sir. In the Bay Lake section about nine miles from Groveland?

Q. In the section known as Bay Lake about nine miles from Groveland?

A. Yes, sir.

Q. How long have you lived there?

A. About three years.

Q. Where did you — before then?

A. Georgia.

Q. When did you come down from Georgia?

A. About 1947.

Q. Where does your father live?

A. Bainbridge.

Q. Do you have relatives living here on your side of the family?

A. Yes, sir.

Q. Name them?

A. Milton Moody, my half brother. He lives at Bay Lake.

Q. How long has he lived there?

A. About four years.

Q. Any others?

A. Nancy Lee Moody, my half sister. She lives at Bay Lake.

[fol. 265] Q. How long?

A. Since 1946.

Q. Any others?

A. Harold Moody, my half brother, in the Bay Lake section.

Q. How long?

A. Since 1946.

Q. Any others?

A. My mother, Sallie Padgette, in the Bay Lake section since 1946.

Q. Are any of these parties married?

A. Yes, sir.

Q. State the maiden names of their wives, whether they are of Lake County families, and the number of children?

A. Katie-Ruth Tootle. Ina Price, one child.

Q. Who did she marry?

A. Harold Moody. Albert Pearce Caldwell, no children.

Q. Who did he marry?

A. My sister, Nancy Lee Padgette.

Q. What was your wife's name?

A. Norma Lee Tyson.

Q. Where is she from?

A. Groveland, Florida.

Q. Is her father living?

A. Yes, sir.

Q. His name please?

A. Coy Tyson.

Q. Where does he live?

A. Groveland.

Q. Do you know how long he has lived in Groveland?

A. No, sir, I don't.

[fol. 266] Q. You don't know whether he was born here or not?

A. No, sir.

Q. Is her mother living?

A. Yes, sir.

Q. What is her name?

A. Edna Tyson.

Q. She lives at Groveland?

A. Yes, sir.

Q. Does she have brothers or sisters?

A. Yes, sir.

Q. Name them and give their residences?

A. Geneva Gray, Brewster, Florida, Polk County; Addie Thompson, Groveland, Florida. Neda Garton, Groveland, Florida. Alma Garton, Groveland, Florida. That is all.

Q. Do you know whether your wife has any cousins living in and around Lake County?

A. Yes, sir.

Q. Name them?

A. Betty Lou Thomas, Groveland, Florida. Margaret Joiner, Groveland, Florida. Bernice Joiner, Groveland,

Florida. June Garton, Groveland, Florida. Darrell Story, Groveland, Florida. Donald Story, Groveland, Florida. That is about all I know.

Q. What is your business?

A. Farming.

Q. What is your father-in-law's business?

A. Farming.

Mr. Akerman: That is all at the present time. If you get any more on that let me know and we will call you back for that purpose.

Cross-examination.

By Mr. Hunter:

Q. What do your people do, are they all farmers?

A. Yes, sir.

[fol. 267] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 268] (The Court reopened after a short recess.)

MR. RICHARD T. MULLINS, being first duly sworn, testified as follows:

Direct examination

By Mr. Price:

Q. State your name, please sir?

A. Richard T. Mullins.

Q. Where do you live, sir?

A. (No answer)

Q. Where do you live, sir?

A. Eustis, Florida.

Q. What is your occupation?

A. Publisher of a newspaper.

Q. And that newspaper is?

A. Eustis—. (Out of hearing of the Reporter)

Q. Mr. Mullins, I wonder if you would mind giving us the figures which represent your circulation through Lake County?

A. My figures as I picked them up, today, at the office, run around 1475.

Q. That circulation is in Lake County?

A. Yes. (Further response out of hearing of the Reporter.)

Q. Mr. Mullins, then, your actual circulation in Lake County is around 1200?

A. That's right.

Q. That figure was the circulation during the period, say, from July 16th until the present time?

A. Approximately. Yes.

Q. That wouldn't vary materially? (Indicating by head) No.

Q. All right. I have here a copy of the Eustis Lake Region News, which is dated July 21st, 1949. The right-hand column of that edition of your paper carries an article which is entitled, "National Guard Here called out in [fol. 269] South Lake County. Mob Disturbances. Violence Flares." I show you that paper. That's dated Thursday, July 21st. That article does appear there?

A. Yes sir.

Q. Now I ask you who wrote that particular article?

A. I did.

Q. Now you have stated that there was, in South Lake County, mob disturbances. I think you used those words. Violence Flares." Just what, if you would mind telling me, what, Mr. Mullins, was the basis for those statements in your article and in the Head of your article?

A. Well as far as I recollect, it was the mob violence, the houses were burned in Stuckey's Mill. That was the main thing.

Q. All right, sir. I hand you again this same page, calling your attention to 4 pictures which appear thereon, with the heading, "Eustis Guard Unit Moves." Would you mind telling me what those 4 pictures are?

A. Those 4 pictures of the local guard unit in Eustis making preparations to move to Groveland that Sunday night.

Q. In other words, that was on the Sunday before, those pictures were taken, on the Sunday before, of that unit making preparations?

A. That was the Sunday night that they did move. In other words, the night that they moved. Sunday night before the Thursday. Yes sir.

Q. Sunday before Thursday. That's what I meant.

A. I don't know what the date was.

[fol. 270] Q. All right, sir. Those are the 4 pictures which take up the second and third columns from the righthand side of the page?

A. That's right.

By Mr. Price:

Q. All right. The Defendant offers in evidence the right-hand column and the 2 adjoining columns of the Eustis Lake Region News dated Thursday, July 21, 1949. Like to offer this as Defendant's Exhibit DD.

The Court: Admitted. Show the proffer to read and ruling the same as before.

(Whereupon, the exhibit was received and so marked.)

By Mr. Price:

Q. All right. I have in hand a copy of the Eustis Lake Region News, which is dated, Thursday, August 11, 1949. On page 7 of that publication, there is an article which is found in the third and fourth columns of that page. That article is headed, "Fast Talking Sheriff makes National News." Does that appear on that page?

A. It does.

Q. All right.

Mr. Price: The Defendant offers in evidence, third and fourth column, page 7, of the Eustis Lake Region News, dated, Thursday, August 11, 1949. Offered as Defendant's Exhibit EE.

The same proffer.

The Court: The same ruling.

(Whereupon, the exhibit was received and so marked.)

[fol. 271] Q. All right. I have in hand a copy of the Eustis Lake Region News, which is dated, Thursday, August 18, 1949. On the top of the third column of the first page of that paper is an article. Does that appear there and in that particular place?

A. It does.

Mr. Price: All right. The Defendant offers in evidence the third column of the Eustis Lake Region News, dated, Thursday, August 18, 1949, with the said proffer.

The Court: Admitted. Same ruling.

(Whereupon, the exhibit was received and marked, Defendants, Exhibit FF.)

Mr. Price: That's page 1.

Q. I have now in hand a copy of the Eustis Lake Region News which is dated, Thursday, August 25th, and I have rather bold headnotes on this, which covers 3 columns, and an article heading down from that bold type, the right-hand column, which is continued on page 4 and column 4—I beg your pardon—in column 5, page 4. I hand you this paper?

A. That's correct.

Q. All right. Would you mind stating who wrote this particular article, sir?

A. Our Editor wrote that. Mrs. Bolles.

Mr. Price: Defendant offers in evidence the heading of the first three columns on the righthand side of the page and righthand column of page 1 and the fifth column of page 4 of the Eustis Lake Region News, which is dated, [fol. 272] Thursday, August 25th, '49.

Same proffer.

The Court: Same ruling.

(Whereupon, the exhibit was received and marked Defendant's Exhibit GG.)

Cross-examination

By Mr. Hunter:

Q. In preparing these articles, did you make any investigation in Groveland and down in that country?

A. I was down, Sunday night, yes sir.

Q. What was it? What did you find down there?

A. I got down rather late. The Guard was still there. And it was comparatively quiet. I mean, just a few people out on the street. Most of those were, I think, the deputy sheriff and guard unit.

Q. Have anyone with you?

A. I was with a party of people. Yes sir.

Q. Any women and children with you?

A. Yes sir. Two ladies.

Q. Do you feel you were in any danger down there?

A. Not when we were down there. Not particularly, no sir.

Q. Everything was quiet?

A. Yes sir.

Q. How long have you been in this section?

A. Well, I have lived here off and on 7 or 8 years.

[fol. 273] Q. Lived around Eustis?

A. Yes sir.

Q. Great many colored people in Eustis, aren't there?

A. Yes sir.

Q. Whole sections of the town are colored, aren't they?

A. I believe there are 2 sections.

Q. What is the relationship between the colored people and the white people in Eustis?

A. Well from my observation, very good.

Q. Now in one of the documents that they have filed in this case, and sworn to, it says, "At the time of the grand jury returned a verdict against your defendants herein," I believe it was on August 20th, "Lawless mobs were roaming throughout the County of Lake, attempting to seek and find the defendants and inflict great bodily injury on them and take their life and liberty without the due process of law and, that at the time the said Grand Jury was summoned and empanelled and prior thereto, a state of hysteria, prejudice, ill feeling, was rampant throughout Lake County, and among a large body of citizens directed against the defendants and other members of the negro race." Is that statement true?

A. Not as far as I know. No sir.

Q. Was there any such condition as that in existence in Eustis or any other place that you went?

A. No.

Q. Were there any colored buildings burned in Eustis or any families driven out of Eustis?

A. No sir. Not that I know of.

[fol. 274] Q. In your experience as a newspaper man, did you find and rampant hysteria and prejudice against the colored race up there around Eustis or at any other place, now or at any other time?

A. No. I haven't.

Q. The relations are good, are they not?

A. That's right.

Re-direct examination

By Mr. Akerman:

Q. There's quite a number of negroes in Eustis?

A. I say, quite a number. I don't know how many, exactly.

Q. Could you give us any idea of the proportion to the population?

A. Well, I understood just roughly, I think there's probably a few thousand there. As against 6,000, now. The last census figures, I think were, '45, showed five thousand or 6,000 people, altogether, in Eustis.

Q. You would estimate, then, the percentage of colored population of Eustis, was approximately 25%. Is that correct?

A. In other words, 2,000 out of six.

Q. 2,000 out of six. Approximately a third, 33 1/3%?

A. Yes sir.

Q. Are any of them property owners?

A. I imagine they are. Yes.

Q. Considered substantial citizens?

A. Quite a number of them.

[fol. 275] Q. Now you testified concerning relations in Eustis. You were aware of the fact that it was necessary for all negroes to be moved out of Groveland area, are you not?

A. I was aware of the fact that they had been moved out.

Q. Did you investigate to find out whether they were moved out by the better, more substantial white citizens for protection?

A. My only knowledge of that was from what I heard and what I had seen in the other papers.

Q. When you went down there to Groveland, you didn't see any negroes around there?

A. No, I didn't, that night.

Q. So your testimony is limited to the Eustis area and not to the Groveland area?

A. In regard to what?

Q. The relationship. You said there was no burning?

A. Yes. That would be the Eustis area. Sure.

Q. You know there was some burning down near Groveland, don't you? A home?

A. That's right.

Q. And you know there was some shooting into a negro honky-tonk known as the Blue Flame?

A. Yes sir.

Mr. Akerman: No further questions.

Mr. Hunter: That's all.

(Whereupon, the witness was excused and withdrew.)

[fol. 276] Mr. Akerman: If the Court please, it is after 5 o'clock and it is necessary for defense counsel to drive to and from Orlando in the preparation of this case, and in addition to the preparation for this hearing, I am attempting by working night and day to get ready for the other hearing. We would like at this time to ask for an adjournment.

The Court. We won't adjourn at this time until we finish with the newspapers.

Mr. JACK GRANT, being first duly sworn, testified as follows:

Direct examination.

By Mr. Price:

Q. Would you please state your name?

A. Jack Grant.

Q. Where do you live, Mr. Grant?

A. Leesburg.

Q. How long have you lived in Leesburg, Mr. Grant?

A. About 5 years.

Q. Where did you live prior to that time?

A. 6 months in Seattle, Washington, lived in Detroit, Michigan, off and on; spent the winters in Florida. Attended Michigan schools.

Q. You are connected with the Lake County Citizen?

A. I am.

[fol. 277] Q. What is your capacity on that paper?

A. I am general business manager.

Q. You are also connected with the Leesburg Commercial. Is that true?

A. I am.

Q. And your capacity with that paper?

A. The same capacity.

Q. Mr. Grant, I wonder if you could tell us, give us the

circulation figures on these two papers, the Lake County Citizen and the Leesburg Commercial, in Lake County, which would represent that circulation during the period of July 16th, until the present time?

A. 3620.

Q. Is that combined now? Both?

A. That's the combined circulation.

Q. About how does that break down as to each paper?

A. 2880 for the—Leesburg Commercial, 2880, and the balance is taken up with the Citizen.

Q. And your Leesburg Commercial is the daily paper?

A. No. It is a weekly paper.

By Mr. Hunter:

Q. In Lake County?

A. No, Mr. Jeff. That's our total circulation. We don't have it broken down.

By Mr. Price:

Q. Now I asked you a moment ago if that was your circulation in Lake County.

A. All I have is my total circulation. That was what I had on my subpoena, was the circulation rates. That's [fol. 278] what I brought over. Our circulation figures.

Q. Would you like to make an estimate or approximation of what percent of that or, about how many papers you do circulate?

A. I mail out about 200 of the Leesburg paper. Mail out about 75 of the Citizen.

Q. In other words, those figures will be correct, deducting those amounts?

A. Approximately. Yes sir.

Q. Approximately correct within a very few. All right. I have before me the Lake County Citizen, the issue dated, Friday, July 29, 1949. I would like to call your attention to the article appearing in column 2. That article appearing there. Would you read the heading of that article?

A. "Inquest had to Killing of fourth suspect."

Q. That article refers to facts involved in this case, does it not?

A. Yes sir.

Q. I wonder if you can tell me who wrote that article? If you do know?

A. I know. An Editor. Member of my staff.

Mr. Price: All right. Defendant offers in evidence column 2, page 1, Lake County Citizen, issue of Friday, July 29, 1949. The same proffer.

(Whereupon, the paper was received and marked Defendants exhibit HII.)

[fol. 279] Q. All right. I hand you, Mr. Grant, a copy of the Lake County Citizen, dated, Friday, August 19, the article which I am particularly referring to is in 3 columns from the righthand side of the page, there. Does that article, up at the top, here, I wonder if you would read the title of that article?

A. "Trial Set August 29 for Attack Case."

Q. And one of your editorial staff also wrote this article?

A. The same person.

Mr. Price: All right. The Defendants offer in evidence third column from the righthand side of page 1, Lake County Citizen, edition dated, Friday, August 19, 1949. That's offered as defendant's exhibit H.

The same proffer.

The Court: Same ruling.

(Whereupon, the exhibit was received and so marked.)

Q. All right. I hand you now a copy of the Lake County Citizen, which is dated, Friday, July 22, 1949. There is a headline which reads, "Jury indicts three Negroes," also a subheadline, covering the first three columns on the righthand side of the page, "Unrest in South Lake Eases as Sixth Day of Tension Passes." Does that appear on that page in that place?

A. Right.

Q. And a member of your editorial staff also wrote that?

A. That's right.

Q. Would you mind stating the name of the writer of the [fol. 280] various stories; if it is the same?

A. It's the editor that appears in the mast heading, there. Mrs. Jean Snead.

Mr. Price: All right. The defendant offers in evidence the headlines as well as the subheading covering the top of

the first three columns from the righthand side of the page as well as the column covering the righthand side of the page, which is continued on page 4 of this same paper, being continued in column 4 of page 4.

Same proffer.

The Court: Same ruling.

(Whereupon, the paper was received and marked Defendant's Exhibit JJ.)

Q. Now all of these papers were printed and disseminated during the period covered by your circulation figures which you have previously given?

A. With a fluctuation of 50, one way or the other, depending upon the street sale.

Q. All right. I have now a copy of the Leesburg Commercial which is dated, Thursday, August 18th, and would like to call your attention to column 2 of the first page, which is entitled, "Trial Set August 29 For Attack Case." Does that appear at that particular place?

A. It does.

Mr. Price: All right, the defendants would like to offer in evidence this paper. The same proffer.

The Court: The same ruling.

[fol. 281] (Whereupon, the exhibit was received and marked as Defendants' Exhibit KK.)

Q. I have here a copy of the Leesburg Commercial, which is dated, August 11, 1949. I'll call your attention to columns 1—pardon me—rather the righthand column and the column next to the righthand side, which is headed, "Negro attack suspects will be arraigned at the Court House Today. Trial will be set soon for Three Indicted Groveland negroes."

A. That's right.

Mr. Price: Offered as Exhibit LL. The right hand column and next to the righthand column of the Leesburg Commercial, which is dated, August 11, 1949. Same proffer.

The Court: Same ruling.

Q. I have a copy of the Leesburg Commercial, which is dated, Thursday, July 28; call your attention to column 5 of the first page of that paper, which is headed, "Inquest

Today of Killing of fourth suspect." Does that appear at that place?

A. It does.

Mr. Price: The Defendants offer in evidence as Exhibit MM, column 5 page 1, Leesburg Commercial, Thursday, July 28, 1949.

The Court: Same ruling.

Mr. Price: Same proffer.

[fol. 282] (Whereupon, the paper was received and so marked.)

Q. All right. I hand you now a copy of the Leesburg Commercial, which is dated, July 21, 1949. What is the headline on that edition?

A. "Futch Empanels Grand Jury."

Q. What is the bold printing of the subheading?

A. "Tampa Guard Patrols South Lake County to end rioting."

Q. That is the two righthand columns of the paper?

A. That's right.

Q. Then how is the righthand column headed?

A. "Four Negroes Attack Young Bay Lake Girl."

(Mr. Price:)

Q. All right. That article is continued on page 11?

A. Page 10.

Q. Column 2. That article is continued on column 2, page 11.

A. That's right.

Q. I would also like to ask you what you see in the—I suppose it is 2nd, 3rd, 4th, and 5th columns between the headline and on down in the page, there?

A. I see a picture of Willis McCall talking to some of our Eustis Guards. These are two pictures of them.

Q. That picture to which you just referred covers 3 columns. There are also 2 pictures next to it on the right, which cover 2 columns.

A. That's a picture of a fire; that's a picture down there of some guards standing at attention.

Q. Mr. Grant, do you know what picture of what particular fire that is?

The Court: Unless it could speak for itself, I think the [fol. 283] witness is incompetent to testify.

Mr. Price: All right. The Defendants offers as exhibit OO the Leesburg Commercial, July 21, 1949; offering the headlines as well as the pictures appearing in column 2-6, and also the full page heading appearing in the right-hand column and next to the right hand column.

The Court: The same ruling.

Mr. Price: The same proffer.

(Whereupon, the paper referred to was received in evidence as Defendants Exhibit NN.)

Q. I have here a copy of the Leesburg Commercial, which is dated, Thursday, August 25th, 1949. On page 2 of that paper, in the second and third columns, I hand you the paper, would you read the heading of that article?

A. "Widely publicized rape case trial will begin Monday at Court House."

Mr. Price: Defendants offer as Exhibit OO, the second and third columns of page 2, of the Leesburg Commercial, the issue of Thursday, August 25th.

Same proffer.

The Court: Same ruling.

[fol. 284] (Whereupon, the paper referred to was received and marked Defendants' Exhibit OO.)

Q. All of these articles in these papers which I have handed you were covered, these Leesburg Commercials, were covered by the circulation figures which you—

A. As I stated before. Yes. With a fluctuation that would depend upon the street sales.

Q. And which fluctuation has not been over—we'll say, if you could give me it roughly, the least number of the circulation?

A. I told you it would have a fluctuation of 50, one way or the other.

Cross-examination.

By Mr. Hunter:

Q. Did you make any investigation, as editor, of conditions in the county at that time?

A. Yes, sir.

Q. Were you in Groveland?

A. Yes, sir.

Q. What were the conditions down there?

A. There was plenty of observers down there. Sitting in their cars.

Q. See any rioting or unlawful acts going on?

A. No, sir.

Q. See any negroes around there?

A. No, sir.

Q. Did you go in the negro quarters?

A. Yes, sir. I did.

Q. None there?

A. No, sir.

Q. Did you take any women or children down there with you?

A. Yes. I took my sister with me.

[fol. 285] Q. You didn't feel that you were in any danger down there?

A. No, sir.

Q. Now in the other sections of the county, was there any rioting? Anything unusual going on between the white and black?

A. No, sir.

Q. What, in your opinion, is the feeling that exists between the white people and the colored people in this county?

A. Very good.

Q. Was there anything other than normal during this entire period between the colored people and the white people in this county, other than that particular territory down there around Groveland?

A. No, sir.

Q. Have you found any prejudice against the people of the colored race in this county?

A. No, sir. I haven't.

Q. Around Leesburg, don't you have quite a number of colored people in business?

A. Yes, sir. We do.

Q. Does anyone interfere with them in any way in their business?

A. No, sir.

Q. Do they own homes?

A. Over one third of our negro population own homes in Leesburg.

Q. In Leesburg?

A. Yes, sir.

Q. In the Pittsburgh Courier, on September 13th, a purported interview with Franklin H. Williams, of the NAACP, who is one of the attorneys for the defendants in this case, in which this language was used:

[fol. 286] "All this disturbance down here is a part of one great plot to intimidate the negroes in the community, force them to work for little or no wages, and to stop them from being so upity." Have you ever run into anything that kind?

A. No, sir. I certainly haven't.

Q. It is stated that, "When colored people become prosperous and independent, that their homes are burned and they are run out of the county." Is that statement true for Lake County?

A. It certainly is not.

Q. Is it a fact that the white people here collaborate with and encourage the colored people to own their own homes and other property?

A. It's been my experience all the time I have lived in Lake County.

Mr. Hunter: I think that's all.

Redirect examination.

By Mr. Akerman:

Q. You say 30% of the negro citizens of Leesburg own their own homes?

A. I have been given that information. Yes, sir.

Q. About what is the percent of colored population in Leesburg of the total population?

A. I don't know what the total population is, but it is around 3,000.

Q. 3,000 negroes?

A. Yes, sir.

Q. You don't know what the total population is?

[fol. 287] A. I am not sure.

Q. I'm not trying to pin you down, I'm just trying to get an estimate, of the population. You say it was a third of 25%?

A. We don't know what your white population is over there now. We are going through a city limits expansion.

Q. Could you give us any estimate at all on it?

A. Approximately a third.

Q. About 33 1/3%, just an approximation?

A. That's right.

Q. And of those, approximately one third own their own homes?

A. That's the information that I have been given. Yes, sir.

Q. And they have businesses?

A. They have.

Q. What would be considered, then substantial citizens?

A. That's right.

Q. Now you stated there were not homes burned in Leesburg?

A. No, sir.

Q. Are you aware of the fact that negro homes were burned down in the Groveland area?

A. That's what I have read.

Q. You weren't down there at the time the burning was going on?

A. I didn't see any houses burning. No.

Q. Were you down at the time the shooting was done?

A. No, I was in Clermont.

Q. You know there was some shooting going on?

A. That's what I was told.

Q. And you are familiar with the fact that all of the [fol. 288] negroes were removed from the Groveland area?

A. Yes, sir.

Q. Do you know whether this was done at the behest and with the assistance of the better class of white people down there?

A. That's the information that I have. Yes, sir.

Q. That the better class of white people protected them by getting them out of the community. Is that right?

A. I didn't define them in classes.

Q. Let's put it this way. Let's leave the classes out. That's the wrong thing. The substantial proportion of the white population. Let's put it that way. I think it is more in keeping with it. I think you are right on it. A substantial proportion of the white population aided and assisted in getting away from there?

A. Yes, sir.

Mr. Akerman: No further questions. That's all the newspapers we have. We have subpoenas out for others, but they are not here.

Mr. Hunter: You have some other witnesses that are here?

Mr. Akerman: Yes, I have seen them.

The Court: Let's proceed with what we have got for a while longer.

[fol. 289] Mr. Akerman: If the Court please, I understood you to say we would adjourn.

The Court: I meant you would continue with the newspapers and see what we are going to do.

Mr. Akerman: Will you give me about a three minute recess, then?

The Court: Yes, sir. Give you 5 minutes.

Mr. Akerman: If the Court please, at this time, it is 5:45 PM. The defendants respectfully move for a recess upon the following grounds:

1. That defense counsel are in Orlando, Florida, a distance of some 30 miles from the court room, and must drive back and forth every day, consuming a considerable portion of their time.

2. The defense counsel are working night and day in the preparation of their defense in this case and have made arrangements to have witnesses brought in to discuss with them this case, tonight, in additional attempt on their part to prepare the law.

3. That it is the usual custom to adjourn the Court at a reasonable hour and that the next witness to be called will, in all probability, take at least an hour and a half.

[fol. 290] Mr. Hunter: Your Honor, the State would like to see this case go ahead. We have got a great many witnesses here, summonsed by the State. Just waiting on these men, here while they introduce and read newspaper articles, and we don't want to keep them away from their businesses other extra days.

The Court: Proceed with the next witness.

WALTER IRVIN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q: What is your name?

A: Walter L. Irvin.

Q. Were you one of the defendants in this case?

A. I am.

Q. When were you first arrested?

A. I was arrested on the 16th of July.

Q. By whom?

A. By the officers of this county.

Q. Do you see any of them in this Courtroom?

A. Sure.

Q. Will you point them out for me and tell me who they are?

A. They are not in here at the present. They was a few minutes ago.

Q. Do you know Sheriff McCall?

A. I don't know him, but I have learned him since I have been here.

Q. After you were arrested, Walter, where were you arrested?

A. At my house.

[fol. 291] Q. At your home?

A. That's right.

Q. After you were arrested, were you at any time beaten or abused?

A. I was.

Mr. Hunter: Wait a minute. We object to that as being irrelevant and immaterial.

The Court: Objection sustained.

Mr. Williams: At this time, the defense counsel would like to offer to prove to this Court by the testimony of the witness on the stand, one of the defendants in this case, to present testimony in support of the allegations of our motions upon which we are having this hearing, to the effect that this defendant, present witness, was subjected to brutal, inhuman beatings. Beatings by the State officers, in whose custody they were at one time and in whose custody they are at present.

The Court: I consider that completely irrelevant and immaterial and will not permit it.

Mr. Williams: You are excused, Walter.

Defense at this time calls Samuel Shepherd.

SAMUEL SHEPHERD, being first duly sworn, testified as follows:

[fol. 292] Direct examination.

By Mr. Williams:

Q. What is your name?

A. Samuel Shepherd.

Q. Are you one of the defendants in this case?

A. I am.

Q. Where are your mother and father, Samuel?

A. I do not know.

Q. Do you have any objection to our bringing them into this county to testify at your trial?

A. Yes, I do.

Q. What objection do you have?

Mr. Hunter: How I object to that. What connection does that have with this case?

Mr. Williams: Are you objecting to this?

Mr. Hunter: Go ahead.

Mr. Williams: No objection?

Mr. Hunter: No. I don't object to it.

A. Well the reason I wouldn't, would be that I wouldn't think it would be safe for them here.

[fol. 293] Q. Were you at any time beaten or otherwise physically abused by officers in whose custody you have been since you have been under arrest?

The Court: Just a minute. I ruled on that same thing in the other witness. I don't want you to attempt it any more.

Mr. Akerman: If the Court please,

Mr. Williams: All right, at this time.

Mr. Akerman: (Continuing) Can we make a proffer on behalf of this witness and also the other witness.

The Court: You can make the proffer. But I don't want you to call the witness up and try the same thing over again.

Mr. Akerman: That is the purpose of this so that the record will show that they made this proffer by this witness and also that we are prepared to prove it by the other witnesses, but would stop the necessity of asking the questions.

Mr. Hunter: The proffer, itself, would be immaterial.

and irrelevant and open up a new, entirely different matter.

[fol. 294] The Court: If it is proffered, I am going to refuse it, of course.

Mr. Akerman: What we want is the proffer.

The Court: All right. Let the record show the same proffer was made as to the other two defendants that was made on the first one.

Mr. Akerman: That's all the witnesses we have at the present time. We have subpoenas out on some others.

Mr. Hunter: You have Luther Thomas here.

Mr. Akerman: I haven't had even an opportunity to talk to him, Your Honor.

Mr. Hunter: You have other witnesses that you're going to use.

Mr. Akerman: We have subpoenas out. If they get here, we're going to use them. I don't even know what subpoenas we have out at the present moment. We have had so many. I intend to use the Clerk of the Court.

Mr. Hunter: He's right here. You don't have to subpoena him.

[fol. 295] Mr. Akerman: Subpoenas duces tecum.

Mr. Hunter: Have you told him what you want?

The Clerk: Yes, they told me.

Mr. Hunter: What was it?

The Clerk: A list of the grand jurors for the past 30 years. When I come up, they had the list up to '43. I don't know whether they have any more than that or not.

Mr. Hunter: I am going to ask the Court to intervene and not require the Clerk of this Court to furnish a list of grand jurors up to 30 years at this time, unless it can be shown that it is material to this case.

The Court: I think the request is entirely unreasonable from the present viewpoint.

Mr. Akerman: It is my understanding that this hearing is on all motions pending now before the Court.

The Court: Yes.

[fol. 296] Mr. Akerman: All right, sir. It is my understanding that there is no need of subpoenaing the clerk of the court if the Court is going to intervene.

The Court: I understood that you had asked the Clerk to furnish you with a list of grand jurors for the last 30 years.

Mr. Akerman: No, sir. We are preparing a subpoena *ducis tecum* to ask the Clerk to bring into this Court the grand jury list for the past 25 years. We are not asking him to furnish it to us.

The Court: Unless you can make some showing that it is necessary it will certainly be denied on the ground it is unreasonable.

Mr. Akerman: If the Court please, I am at somewhat of a loss to know just the proper way to proceed on this.

The Court: I have been at a loss on the proceeding, myself, so I can't help you.

Mr. Akerman: I would like to ask whether it is necessary for us to issue the subpoena or is the Court going to rule on it on the motion of the State's Attorney?

[fol. 297] The Court: I think, for us to get it in the record, that I will rule at this time that the request is unreasonable, unnecessary, an effort to put an undue burden upon the Clerk of this Court. And instruct the Clerk not to issue any such subpoena *ducis tecum*.

Mr. Akerman: My understand is that the praecipe is to be filed and the Clerk then instructed to refuse to file the praecipe?

The Court: He is not instructed to refuse to file the praecipe. I instructed to refuse to issue the summons.

Mr. Akerman: That's what I say.

The Court: You have no more witnesses to offer at this time?

Mr. Akerman: No more witnesses that are present in Court.

The Court: How about you, Mr. Hunter?

Mr. Hunter: Yes. We have witnesses. We can either go ahead or go to supper and come back. I would like to have the men we have summonsed here heard.

The Court: How long will it take?

Mr. Hunter: Take two or three hours.

[fol. 298] The Court: Well, it's just 6 o'clock. Let's go ahead for a while.

Mr. Akerman: If the Court please, at the time the defense counsel respectfully objects to the holding of a night session in the hearing of this case upon the grounds that defense counsel has been working night and day in the preparation of this case, with arrangements already made for the meeting of a great number of prospective witnesses for the trial in chief, in Orlando, tonight; that, if the

defense counsel is unable to meet the witnesses tonight, we do not know when we will be able to get them again.

The trial is set for Thursday morning, which necessitates the issuance of praecipe for witnesses' subpoenas which will take considerable time on the part of defense counsel.

Further, it necessitates the preparation of a great deal of law. We hoped that sometime during the night or the early hours of the morning, we would be able to work some on the law in this case.

Mr. Hunter: I would like to call to the attention of the Court, again, the statement which I made this morning. A member of counsel for the defense has stated that he intends to dilly dally this case along.

Mr. Akerman: I'll ask Mr. Hunter, is that statement made to him?

[fol. 299] Mr. Hunter: To me?

Mr. Akerman: Was it made to you?

Mr. Hunter: No. It wasn't made to me.

Mr. Akerman: I object to Mr. Hunter testifying.

Mr. Hunter: I am not testifying. I am telling that the statement was made to me.

Mr. Akerman: I made no such statement, and I am chief defense counsel in this case.

Mr. Williams: I made no such statement.

Mr. Price: I made no such statement.

Mr. Hunter: To me?

Mr. Price: To you or to anyone else.

Mr. Hunter: That's the information that I have and it is borne out by the acts of the counsel here, today.

[fol. 300] The Court: I don't think you can discuss that part of it, Mr. Hunter, unless you heard the statement, yourself.

Mr. Hunter: Well I can prove it. I don't believe this gentleman will deny it under oath.

Mr. Price: Would you like to put me on the witness stand?

Mr. Hunter: No.

Mr. Akerman: I think the statement is out of order, if Your Honor please, for it is a known fact that defense counsel have not had the many, many years experience that the State Attorney has had and we may be inept and inapt in our handling of this case and also it may be that some of the evidence we put in is not necessary, but as an officer of this Court, charged with defense of these defendants, I

am going to endeavor to put in every bit of lawful evidence that I can in this case. And if, through ignorance, lack of experience, inability, I do make some mistakes, I would appreciate the advice of counsel of both the Court and the State's Attorney.

Mr. Hunter: I am not employed by anyone defending the defendants in this case. Therefore, I decline to give any advice.

[fol. 301] We have witnesses here that are ready to testify. If they are through. It isn't yet night, and I would appreciate it if the Court would permit us to begin our testimony.

The Court: Call your first witness.

MR. G. G. WARE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. Your name is George G. Ware?

A. Yes, sir.

Q. What is your business, Mr. Ware?

A. President of the First National Bank at Leesburg.

Q. Do you have other business interests?

A. Yes, sir.

Q. Tell the Court what they are.

A. I am in the stone quarrying business and the fire insurance business and I own interests in other businesses. A few others.

Q. How long have you lived in Lake County?

A. Since 1909.

Q. How long have you been connected with the banking business in Lake County?

A. Since 1909.

Q. In your business capacity, are you familiar with men and women throughout this county?

A. Yes, sir.

Q. Are you familiar with colored people?

A. Yes, sir.

[fol. 302] Q. Do you have business dealings with them?

A. Lots of them.

Q. Have you had those dealings over a period of years?

A. 40 years.

Q. In these dealings with white and colored, in Lake County, Florida, have you found a degree of prejudice and ill feeling between the two races?

A. I have not.

Q. What is the relation of the two races in this county?

A. I think it is excellent.

Q. In your city and in your territory, are there colored people who own property?

A. Yes, sir. We have many valuable accounts with colored people. We make lots of loans to colored people. We welcome them.

Q. Do they own their homes?

A. Yes, sir.

Q. Have you known of any disposition on the part of the white population to try to keep colored people from owning property in this county?

A. I do not.

Q. Has there been, or is there, any disposition to deny them the rights of citizenship that other people have?

A. I never heard of it.

Q. When this rape took place down here in Groveland, near Groveland, Mascotte, you were in this part of the country?

A. I was in Leesburg.

Q. A statement has been made under oath in this case that [fol. 303] at that time, that lawless mobs were roaming over this county determined to seek vengeance on the defendants and other colored people in this county. All over the county. Is that statement true?

A. No, sir.

Q. Was there any lawlessness at all in the city of Leesburg or in your banking territory?

A. I heard of no lawlessness, except that there was some excitement at Mascotte. But nothing occurred at Mascotte. It was expected to occur but it didn't.

Q. At that time, or at any time since, has there been a wave of hysteria, prejudice and ill feeling in this county toward the colored people?

A. No, sir.

Q. Is there now?

A. No, sir.

Q. You know the citizenry of this county represent pretty well almost every State. Don't they?

A. That's right.

Q. This is a cosmopolitan county, isn't it?

A. There are citizens of almost every other State paying taxes in this county, now. Owning property here and living in other areas and there are many who live here who have come from other states. In fact, the majority.

Q. Do you think that a jury could be found in this county who would try these defendants on the evidence that would be given them here?

A. I do.

Q. Do you think that there are a large body of men in this county who would not be influenced by what had been published in the newspapers or anything else except what they would hear from the witness stand, here?

A. I didn't understand your question.

[fol. 304] Q. Do you believe there are large bodies of men in this county who could try this or any other case on the evidence that would be given them from the stand without being influenced by anything else outside?

A. I think the ones — would be influenced would be a very small body. Minute body.

Q. Do you believe that there is any particular body of men in this county or women, who would approve the mistreatment of any colored man?

A. I do not think so.

Q. From your knowledge, and it is wide in this county I know, do you believe that these men can be given a fair and impartial trial in Lake County?

A. I do.

Mr. Hunter: You may inquire.

Cross-examination.

By Mr. Akerman:

Q. Mr. Ware, you stated there was no trouble down around Mascotte?

A. I said there was anticipated trouble. But it didn't occur. No one was killed.

Q. Are you familiar with the burning of the three negro homes down there near Groveland?

A. I heard about that. Yes, sir.

Q. Do you believe it to be a fact that they were burned?

A. I do.

Q. Did you know that one of the homes was the home of one of the defendants where he lived and where his father owned?

A. I have been told that.

Q. Doesn't that show some ill feeling and illwill towards that defendant and his family?

A. One of the worst crimes in the county had just occurred and in the immediate area where it occurred, [fol. 305] I don't think that you could expect any other situation than what occurred there.

Q. You think that general?

A. But that's in, not in the whole county. That's in that area.

Q. How far would you consider that?

A. I think that the fact that it was limited to that was proven by the fact that the peace officers of this county kept the defendants away from trouble.

Q. By taking them out and taking them to Raiford?

A. They could have stayed here and stayed out of trouble, I think.

Q. You think they could have stayed here?

A. Yes, sir.

Q. You are familiar with the fact, of course, that a group of men came to the jail, here?

A. I heard that.

Q. I wonder if you could give us just a rough idea of what area you figure that ill feeling and ill will was in?

A. Well, I just haven't thought of it in that term. I wouldn't know how to give it. Give an answer to it, sir, because I didn't go down there. I didn't go around and talk to people.

Q. You didn't go down to the Groveland area at all?

A. That's right. I passed through Groveland on my way to Tampa and I saw no sign of any trouble.

Q. When was that?

A. It was during the time the trouble was in progress.

[fol. 306] Q. When the National Guard—?

A. I have forgotten what days it was there.

Q. When the National Guard was there?

A. No. The Guard was not there.

Q. The National Guard was not there at that time?

A. No, sir.

Q. You do know that the National Guard had been called out?

A. I heard that.

Q. And that the 116th Field Artillery from Tampa was called out?

A. That's right.

Q. Now, you have served on many a jury, haven't you?

A. No, sir.

Q. Never served on a jury?

A. Yes. I have been on, but not many a jury. Very few.

Q. This heinous crime received great publicity throughout the County, did it? It's only natural that it should.

A. That's right.

Q. Do you believe there are many citizens of Lake County who haven't heard something purported to be the facts in this case?

A. I think they have heard about it. Yes.

Q. Don't you think the great majority of the citizens who are qualified for jury duty have either read in the newspaper or heard discussed things that purported to be the facts in this case?

A. I think they have.

[fol. 307] Q. You are familiar, of course, with the announcement that these defendants had confessed to this crime, aren't you?

A. I just saw it in the paper.

Q. You saw that in the paper. Don't you think that it would be hard for a man to serve on a jury who, having heard all of this, try as he might be able, to dismiss what he has heard from his mind and go into the case just as if he had never heard anything before about it?

A. No. I think that he would act on the evidence as presented to him.

Q. Don't you think that a great number of the people have made up their minds? Have an opinion?

A. No, sir. I don't think so.

Q. Do you think a great number of them have any opinion as to the guilt or innocence of these parties?

A. I know I haven't.

Q. You have no opinion as to the guilt or innocence of these parties charged with this crime?

A. That's right.

Q. Have you heard any other people express an opinion as to the guilt or innocence?

A. I haven't heard an expression as to guilt or innocence. I heard many expressions of delight or being glad that nothing serious came of it and that it would be tried in the regular way.

Mr. Akerman: No further questions.

Mr. Hunter: That's all, Mr. Ware.

(Whereupon, the witness was excused and withdrew.)

[fol. 308] MR CARLYLE ROGERS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your name, please, sir?

A. Carlyle Rogers.

Q. What is your business, Mr. Rogers?

A. Vice-President, First National Bank of Leesburg. And I am also interested in a cattle ranch of Okahunka and Groveland.

Q. How long have you lived in that territory?

A. Since 1919.

Q. Your business capacity, or otherwise, are you familiar with the relations between the colored people and white people in Lake County, Florida?

A. Yes sir. I think so.

Q. What opportunity have you had to be familiar with relations?

A. Well, I have been in the bank since 1922 and a bank officer about 25 years during that period of time. We have made lots of loans to colored people. I have assisted them on some of their programs financially and helping them work out some of their plans for a parade and other things in the town. And also as a bank officer, I have made numerous loans to the colored people of our community to better themselves. In fact, we have three janitors in our bank and we have assisted all of them to acquire homes. One of them owns two homes and we feel that as we help them better themselves they can take their part of the burden in the community and the tax laws.

Q. Is that your view of the relationship that should exist between the colored people and white people in this county? [fol. 309] A. I believe that I feel that it should and I feel that it does. I feel that in Leesburg, I have talked to numbers of colored people. I think it is unusual. My maid lives in, I think they call it Halls Quarters, Halls Circle, and this Hall owns a 2 story concrete block building. He owns his own home and either 9 or 10 or 11—somewhere between 9 and 11 houses that he rents. I know *have* another man named Pauley that owns two commercial buildings in the quarters and about 13 or 15 houses. And I think it is fine when they can get ahead.

Q. It is the policy of the white people in this county to assist them to get ahead, isn't it?

A. That has been my experience in my community. I would like to further state that during this episode, you might say, that my wife took my 2½ year old boy down in the quarters regularly every afternoon at 5 o'clock and from two to three times at night, per week. I mean, two or three nights per week during that time. I had occasion to use our maid for a baby sitter, and I was down in the quarters and sometimes as late as 12 o'clock.

Q. Anything unusual among the colored people there at that time?

A. There never was any excitement or any reason to believe there would be excitement in any of our quarters or downtown.

I would like to say, on Monday following the rape, I was down at my ranch at Okahumka and I stopped at the Post Office and general store, and I was very interested to see some of the trucks coming in from Grove caretakes that [fol. 310] were loaded down with negroes and they came in, went and purchased their goods and were milling around in the store with the white people. And frankly, I just stood out there and was just observing if there was any tension. There was no tension. There was no discussion and they felt just as safe as they had always felt.

Q. How far was that from Mascotte?

A. I think that Okahumka is 5 miles from Leesburg. And Mascotte is 18 or 19 miles from Leesburg, I don't know. But it was about 13 miles from Mascotte.

Q. As a general thing, would the people of Leesburg stand for mistreatment of their colored population?

A. I know they wouldn't, and I will use this as an example.

One of my best friends, Jesse Beerbower, was on the police force and was killed by a negro, on the edge of Venetian Gardens in line of duty. It was during the war. The negro was rapidly apprehended and was—I don't know where he was taken to jail. There was no trouble in our quarters at the time. There were no riots. There was no feeling of illwill. The negro, at that time, was supposedly intoxicated and he had been causing trouble all night and all that day when they found him.

But I felt that if Leesburg citizenry ever had a cause to lose their head, they had it at that time. But as I say, our relationship has been very good.

[fol. 311] Q. In times of that kind, what is the attitude of the colored people, themselves, towards the criminal element in their class?

A. Well, I have heard the negroes say that they would like to get hold of people that do things like that the same as I have heard white people say they would like to get hold of white people that do things that are wrong. They don't approve of anything that's not right, morally right, in that respect. Any more than white people. Because they are human just like we are.

Q. It's been stated in a paper, here, that at the time this grand jury met in this county, that there was widespread hysteria and rioting all over the county. Directed at the colored people. Is that true?

A. Not in my opinion. Because I noticed that the next banking day, Monday, in our bank, we had our usual line of negro customers and that our relationship has been very good. I feel that on a percent-wise basis that we have made more loans to negroes than any bank in Florida, and that day in the lobby when they were there, I noticed as many as 7 or 8 sitting there. The traffic was going back and forth. They didn't have any tension and I know the white people didn't have. I mean they just didn't think about it. The three janitors servicing our building take turns on the elevator and they didn't feel it.

Q. Do they, do the colored people over there own businesses, stores, and things of that kind?

A. They do. I had hoped if I was testifying, to bring it to your attention. But I cited those two illustrations. Our

three janitors own their homes. We have helped them buy [fol. 312] them. I know a lot of my white friends that have helped them buy them. And in discussing this with one colored man—

Mr. Akerman: I'm going to object to any hearsay testimony. Bring him in.

A. Well, he'll testify.

The Court: Don't tell what anybody told you; just what you know.

A. I feel that we have an unusual percentage of homes owned by colored people in Leesburg.

By Mr. Hunter:

Q. Do you believe that regardless of what's been printed in the newspapers that a jury can be found in this county with ease?

A. I certainly do.

Q. To give these defendants a fair and impartial trial?

A. I certainly do. After working in a bank since 1922, and working in organizations and church work and all over this county, I feel that we have as fine a citizenry in this county, both colored and white, as you will find anywhere in the world.

Q. You think they could get a fair and impartial trial?

A. I certainly do.

Q. In reference to opinions, it is a general opinion that someone is guilty of this crime, is it not?

A. That's right.

Q. But as to who did it, it's a question that the people [fol. 313] of this county want to hear from evidence?

A. They certainly do. And there's one thing that I heard the white people discuss. In my opinion. I'll put it, in my opinion. That I was very thankful that they would have an opportunity to have a fair trial because while the press, as a whole, handled the case very well, there is so many times that inflammatory remarks get in the press, and throw back the relationship which has improved steadily and rapidly in the last few years between the colored and white people. It has a tendency to throw it back and I felt that they certainly deserved a fair and impartial trial and then we wouldn't be crucified through the press in other sections of the country.

Q. Now the facts in this case, as far as they refer to these defendants, here, names of the witnesses, and things of that kind, have never been published at all, have they?

A. I don't know any of the witnesses. I don't know that.

Q. You don't know what anybody would testify to?

A. No. (Indicated by head.)

Q. Then it would be beyond anything you could imagine in this county for people to convict these defendants by newspaper talk until they hear the evidence. Isn't that a fact?

A. Well I hope that people are like I hope to be, that try to be fair and impartial and let the evidence stand on its own feet. And I feel that my friends are as fine a people as anyone's got and I think that the citizenry of Lake County on a whole will do a fine job.

[fol. 314]—Cross-examination

By Mr. Akerman:

Q. I believe you stated you went down to Okahumka?

A. That was Monday.

Q. And didn't go down into Groveland?

A. I didn't have any business down there. I had business at my ranch and I didn't have any business in Groveland.

Q. You are familiar with the fact that down in Groveland, or near Groveland, three negro homes were burned to the ground, aren't you?

A. I heard it. I didn't see it. I don't know. I would like to qualify that. I don't know. I just, you are saying it, and they might have been homes. They, one of them might have been a barn. But I know there's three something.

Q. Buildings?

A. Buildings. Were burned, and I'll say that I heard that.

Q. Did you know that one of the buildings was the home where one of the defendants, Samuel Shepherd, lived?

A. I really don't know that. Of my own knowledge, I don't know.

Q. That was an evincing of a hostility towards him and his family when they burned that home, wasn't it?

A. If that was his home, it might have been. But I would like to make this statement. That I have recom-

mended to, publicly in a Kiwanis Club, to commend the law enforcement officers of this county and I feel that they have done an exceptionally good job. That when the law enforcement officers protect negroes or whites, that they shouldn't be criticized but should be commended. [fol. 315] And they did a good job. And frankly, I made the statement that I wasn't worried any negro getting scared as to what the white people might do. And I still say that I didn't think any negroes were going to get in trouble.

Q. Were you familiar with the fact that all of the negroes had been moved out of the area down there?

A. Well. Let's say that I heard they left. I don't know whether they were moved out. Because that would imply something else.

Q. The information we have. I don't know whether you have it or not. Is that a group of the outstanding white citizens of Groveland area assisted them in being taken away from there for their own protection. Had you heard something very similar to that? We don't say forcibly removed.

Q. Well I did hear that. I don't know it.

Q. You have served on juries, haven't you, Mr. Rogers?

A. Yes.

Q. Quite a number of times?

A. Federal and State.

Q. Now this, you think there's hardly any citizen in Lake County who hasn't either read or heard something concerning this case?

A. Well, I'm surprised every day at people that don't read the papers and don't hear the radio. So I say there's bound to be some.

Q. Most everybody you have talked to concerning this case?

A. They have read about it. Yes.

[fol. 316] Q. And of course you are familiar with the fact that it has been published in papers that confessions had been obtained from all of the defendants, are you not?

A. Well I have heard two sides of that discussed and I have heard there was and there wasn't. So I don't recall just what I read. I heard that two of them confessed and one didn't. And I heard someone say that the three of them did. So I have heard it both ways. So I'll just let that go. I have heard it both ways.

Q. Now in serving on a jury, a man has quite a duty to perform, doesn't he?

A. Yes. Well, it is his duty and privilege.

Q. That's right. -One of the privileges of our country. And it is his duty. And generally, throughout Florida, Lake, Orange, Volusia, Polk County, we have a high type of citizens, don't we?

A. I have already stated that I think it is equal to other sections of the country, too.

Q. I know that throughout this area we have a high type of citizens, but don't you think that it is calling upon a man to make a supreme effort to sit on a jury in a case that he had read articles about, that he's heard the defendants have confessed, assuming that the confession is not introduced in evidence? Don't you think it is a hard job to erase it from your mind and proceed into the case?

A. It is just a question of your moral. And I just, I'll [fol. 317] just say that, myself, I would do the best I could and I feel deeply that we should have the opportunity of trying this case in this county where our name has been besmirched and I feel that they will get just as fair trial here as anywhere because a lot of people would like to show some of the press that the negro has had his opportunity here in this county and will continue to have it.

Q. And you think we can proceed to trial here on Thursday in a calm, judicial manner? Everybody connected with this trial, the witnesses, defendants, and the attorneys need to fear no injury or insults to them?

A. I think the evidence here, today, and I came here a little before ten, shows to me that we are living in a peaceful, law abiding, God-fearing community where people can't say, can't do things, without things happening.

Q. And do you think that, should a verdict if not guilty be rendered by a jury in Lake County for one or all of these defendants, do you think that that defendant could then walk out of this courtroom a free man and be safe?

A. I don't think that you would have any trouble in this courtroom. But as far as my expressing opinion of somebody getting drunk and not going away off somewhere, I can't, but I think that he would get a fair trial and he could walk out of this courtroom.

Q. What might happen to him, then?

A. Well, I still think he might keep on walking.

[fol. 318] Q. Or, he might not?

A. I think it might be a good idea to keep on walking.

Mr. Akerman: That's all.

Re-direct examination.

By Mr. Hunter:

Q. In this modern time, if you were to exclude from jury service all of that class of men who have read about cases and heard them on the radio, wouldn't you exclude most of the intelligent people of the county?

A. If I was a lawyer for the defense or the prosecution, and a man said that he hadn't heard about the case or didn't know anything about it, I just don't know whether I would question him very seriously or not. Because I think they would get a fair trial. And it has been shown here, today, that this has certainly been a peaceful and quiet atmosphere, and I haven't heard anything to the contrary.

Q. Haven't heard it anywhere else?

A. Never have.

Mr. Akerman: That's all—

Recross-examination.

Q. What did you state your business was?

A. Vice-President of the First National Bank of Leesburg and I own a cattle ranch.

Q. And Mr. Ware is president of the First National Bank of Leesburg.

A. Yes.

Mr. Akerman: That's all.

Re-direct examination.

[fol. 319] By Mr. Hunter:

Q. Are you President of the State Bankers Association? Florida Bankers Association?

A. I am Vice-President of the Florida Banker's Association. Chairman of the Hayes Soil Conservation District since its inception, and past President of the Leesburg Chamber of Commerce several times; past Lt. Governor of

the Kiwanis; past two or three other things. I'm nearly about in the past. I'm getting so old.

(There being no further questions, the witness was excused and withdrew.)

MR. LUTHER MILLER, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. Mr. Miller, what is your business?

A. Construction.

Q. Your home in Leesburg?

A. Right, sir.

Q. How long have you lived there?

A. 49 years, October 21st.

Q. You hold any official position over there?

A. In Leesburg?

Q. Yes.

A. Mayor of the town.

Q. During your life in Leesburg, have you had any business or other affiliations or associations with colored people?

A. Very much so.

[fol. 320] Q. To what extent? Tell us about it.

A. Well, we average about 30 to 35 colored people on the payroll each week. We have 100 acres of grove where we work a lot of people. We have 68 colored houses that rent from us. I guess we are pretty well known as the largest individual worker of colored people around that section.

Q. What is the relation that exists between the colored people and the white people over there in that territory?

A. As far as our part is concerned, it is very fine. I could bring you 50 over here in the morning that would testify to that effect.

Q. Colored people?

A. Yes, sir.

Q. Have you ever known of any disposition over there to keep them from getting property or become wealthy if they could?

A. Well, could I show you the records of several that

I have helped get property and homes and helped build their homes? Churches, included.

Q. Did you ever, you and the other white people over there, ever engage in any work with the colored people to help them with their affairs?

A. Well, I have been considered a friend of the colored people for years? I have spoken before the American Legion, colored American Legion, I have spoken in the Church in Leesburg, colored church, different places. I have been surrounded by and shaken hands with the negroes the same as I do with the whites. I don't have any prejudice, whatsoever. Wouldn't have in any way. I don't believe [fol. 321] in that. I don't think anybody else in my particular social strata does.

Q. Do you find any prejudice against the colored man as a race?

A. I certainly do not. I don't know of anybody surrounding me that has. We are not that type.

Q. Are they encouraged to buy property and get along in the world?

A. By all means.

Q. Any colored people own property in Leesburg?

A. Well, I would answer that, sir, by saying I believe I could bring over 25 that have been helped to get their homes by different people in Leesburg, buying their homes. I can show you places that are just as nice as you live in or better, owned by colored people in Leesburg. I say, better than you live in.

Q. Did anyone ever interfere with them?

A. No sir. I credit them many a time in the lumber business—I was in the retail lumber business for 18 years, as you know, and we carried as high as 25 or 30 on our books time and time again. And they never failed to pay us.

Q. Is that the general feeling among the class of people that you associate with in this county for the colored people?

A. I associate with all classes in my work, mechanics, mortar mixers, brick masons, we work colored brick masons. I built at least 25 schools in Georgia, had nothing but colored foreman and everything else. As far as holding any prejudice against the negro in any way, shape or fashion, any of the men who work for us, (don't want to be associated with them socially and live with them), but they have absolutely—I'll bring you over my whole crew in the morning.

[fol. 322] They are working at the present in Orlando for Dr. Orr. We have our colored crew over there. No prejudice. Never has been. And they will make an average of about \$40 a week. Our payrolls will show that.

Q. Another one of the charges made in this, since this cropped up, here, in this thing, is, that white people here want colored people down in this county. If they find one prospering, they run him out. Run him out of the County.

A. That is not a fact, sir.

Q. And that the purpose is to keep him down where they can make him work for low wages. Is that correct?

A. I would like to say that the Ku Klux Klan asked permission to come through Leesburg. I was Mayor of the town. We had a meeting and we invited the colored people to come up to the meeting. And they did come. They came before the City Commission. We refused the Ku Klux Klan permission to go down and intimidate any negroes. And I would do the same thing over again. The Ku Klux have their place. If they want to have it there, it is perfectly all right. I might even join it myself, sometime.

Q. These men were not Lake County men, were they? That came and wanted permission?

A. No. They came out of Orlando. They came to me, personally. I talked to the head of the Ku Klux. He came out of Orlando. And we refused to let them go through there. Of course, we told them they would have to stay on certain streets and I, personally, I think this can be verified, went down in the colored quarters when they [fol. 323] burned the cross and helped take it down, myself. I don't think the negroes, any negro, can tell you that I, as a citizen, have ever in any way, done anything but to help them in every way, shape, form or fashion. That's a general consensus of opinion and every-body's associated in our business. And we have been in business for so long I would hate to tell you.

Q. Do they have any athletic activities in your town?

A. At the present time the City Commission is getting ready to build for them a place to swim and a recreation facility in Leesburg. That can also be proven. You can talk to the colored preachers and also to a fellow by the name of Hampton. I believe he'll verify that. The Superintendent of school over there.

Q. Is he a colored man?

A. He's a professor over there in the schools. Superintendent of schools. That's been talked about. And we, at the present time—and I believe the City Manager will verify that—we are getting ready to give them these recreation facilities. We feel like—if I may say this on the side—that the colored race is entitled to everything we can do for them. And if people would just leave us alone. That includes anybody who wants to take it. Anybody, white or colored. Doesn't make any difference. We can work out our own solution and help them. The time is coming when they will take their respective places in the community. But you can't do that, sir, by law. You can't do it by coercion and you can't do it by persuasion or passing anything in Washington. I'll help the colored race in any possible way. I stand ready to do it tomorrow or any other time. I don't want it rammed down my throat any [fol. 324] more than I want anything else rammed down my throat. But at the present time there is a movement on foot, not only in Leesburg, but several other places, to help the colored race obtain better churches. We would like to see them bettered in every respect. It can't be done in Washington. I, personally, won't stand for it being rammed down my throat, but I would be willing to get with you and work for them to be helped. That's the way I feel about it.

Q. Don't the colored people feel the same way about it?

A. I have spoken at the churches and schools and everything else they got up there, and I help them in any way to get to the point where they can get to where we can both go up together.

Q. Now there's been a lot of sensational stuff published in the newspapers and a lot of it has referred to Lake County, as a whole. Some of the affidavits in this thing, these papers, here, refer to the conditions referring to what ever took place down near Mascotte as being all over Lake County. Is that true?

A. Well they had 348 murders in Chicago. If that question come up, there is this Paul Robeson business. You're going to have feuds and fights in your own home, sir. I think it would be a terrible calamity if Lake County was made to think, in the eyes of the world that they were running a bunch of hoodlums over the colored people or anybody else. It does not exist. I have lived in Leesburg for

49 years and I don't know of any time, any case where I have entered into any lynching or any type of that line or any of my other friends. I think that it speaks for itself. I have gotten many a colored man out of trouble. I can bring you over 25 that I have bailed out of jail. I have [fol. 325] helped—Right at the present time I have got a hundred up with the Sheriff on a colored woman, Mary Miller. Don't happen to be any kin of mine. But nevertheless not a week goes by that I don't help some of them.

Q. Do you think there is sufficient prejudice in Lake County as a whole to keep these defendants from having a fair trial?

A. No. I think they would fare better here than in any other County in the State of Florida. I wouldn't sit on a jury if I couldn't be fair and square and I wouldn't be in a jury. I think there's plenty of men in Lake County the same way. We've got plenty of men in Lake County to serve on a jury with no prejudice.

Mr. Hunter: You may inquire.

Cross-examination.

By Mr. Akerman:

Q. Mr. Miller, you made a statement, something about 'leaving us alone.' You didn't mean to state by that there was anything wrong with me coming over here and doing my best to defend these people?

A. No sir. I think they should be defended the very best you know how.

Q. You think it's my duty to do everything possible in the world within the law?

A. I think that they're entitled to that.

[fol. 326] Q. And you think we can have a calm, judicial atmosphere?

A. I don't see anybody raising hell out here. Do you? Mr. Akerman, if you had a nasty situation in Lake County, you would have a bunch of hoodlums sitting back there. You don't have it in this Court. Take it in some Courts up there, in Illinois. I sat in Courts up there in gang trials. My brother used to be U. S. District Attorney under Wilson. And the cops had to search the gangsters and they would take their guns off them at the door. Now if you think this thing is creating very much interest, which it

is not, I think you are going to be disappointed. I don't see anybody here but what's been subpoenaed here and I think that's a pretty good answer.

Q. You think it is perfectly proper for these men to come over here on the defense?

A. I think it would be a very poor lawyer sworn to uphold the right if you didn't take what you thought was right.

Mr. Akerman: No further questions.

Mr. WHITE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your business, Mr. White.

A. President of the First National Bank in Mt. Dora.

Q. How long have you lived in Florida?

A. Born in Florida.

[fol. 327] Q. Have you had other activities?

A. I have served on the board of directors of the Federal Reserve Bank of Atlanta since 1936, as director representing the small country banks in the 6 Southern States that comprise the Federal Reserve 6th District, and I served on a number of boards of directors, groups, in Mt. Dora.

Q. You live in Mt. Dora, don't you?

A. Yes, sir.

Q. Is Mt. Dora kind of a cosmopolitan place?

A. Yes, sir.

Q. Have people there from everywhere?

A. We have people from all over the country.

Q. In your business capacity and otherwise, have you had an opportunity to observe the relation between the colored people and white people over there?

A. Yes, sir. Every day.

Q. What is it?

A. It is very fine. Could I give some personal experiences I have had? If you would like to have them?

Q. All right.

A. I have personally, myself, on various occasions, spoken to the colored people in the church, school, even on the streets of the colored section of Mt. Dora. I made

contacts with them constantly in my business. I also, had the pleasure of helping a great many of them to obtain homes, to build homes and to buy property. Helped to finance their business.

Q. They are usually pretty good customers, too, aren't they?

A. Yes.

[fol. 328] Q. Any prejudice against them just because they are colored people?

A. No, sir. Not in Mt. Dora. I think the relationship there is fine.

Q. They have their own homes there?

A. A great many of them have their homes.

Q. Churches?

A. Yes, sir.

Q. Anyone ever object to them because they have gotten a home and getting ahead a little?

A. No, sir. We find a great many people ready to help them to get ahead. Live better and have better.

Q. Any rioting over there, or burning of their homes or anything of that kind?

A. No, sir. Very peaceful and pleasant.

Q. While this trouble was going on down there, was there any hysteria over there or anything noticeable among your colored people or white people, either?

A. No, sir. They just moved right along just the same as usual. Nothing unusual over there. No incidents of any kind. Just as many colored people on the street; just as many colored people in the banks and stores as usual.

Q. Just judge now—you know every man, woman and child in that community—just judge by your own community. You think these men here could get a fair and impartial trial in Lake County?

A. Yes, sir.

Q. Did you go down to Groveland while that stuff was going on?

A. No, sir.

[fols. 329-333] Q. Do you know anything about it except what you read in the newspapers?

A. That's all I know about it is what I read in the newspapers.

Q. You don't know whether that's true or not?

A. No, sir.

Q. You don't know whether these particular defendants are guilty or not?

A. No, sir.

Q. And wouldn't say until you heard all of the evidence in that case, would you?

A. No, sir.

Q. And there are hundreds of other men in Lake County of the same mind, would you say?

A. Yes, sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. You are not summoned on the jury in this case, are you?

A. No, sir.

Mr. Akerman: No further questions.

(Whereupon, the witness was excused and the Court took a recess until 9:20 AM, August 31, 1949, at which time, the following proceedings were had:)

[fol. 334] The Court:

Let the record show that the defendants and their counsel are present in the Courtroom.

MR. IRVING BURLEY, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hunter:

Q. Mr. Burley, how long have you lived in Lake County?

A. All my life. Borne right here in Tavares.

Q. Parents were from Maine?

A. Maine and New Hampshire.

Q. Where is your wife from?

A. From Ohio and New York State.

Q. Do you hold any official position in this county, in this town?

A. Mayor of the town of Tavares.

Q. Have you had much knowledge or information with reference to the relations between colored people and white people in Tavares?

A. I would say so. Yes.

Q. What is it?

A. It is a very satisfactory and, I would say, to the benefit of the colored people. They are protected and given encouragement.

Q. Is there any animosity or prejudice against them in this town?

A. None that I know about.

Q. Do you know of any person trying to keep them from trying to get ahead and have property?

A. Absolutely not.

[fol. 335] Q. Do you remember a man by the name of Herndon that lived here?

A. Yes. I was acquainted with him.

Q. He owned a great deal of property here, didn't he?

A. Yes. Purported sale price of the property that he sold when he sold to C. A. Marsh, as I remember, was around \$125,000.

Q. How was he received in the community of Tavares?

A. As any other citizen.

Q. Lived here for many years, didn't he?

A. Yes. And I understand, I think his wife is—still owns the property out near Lake Park. Comes in during the winter.

Q. Was he a colored man?

A. Yes.

Q. What kind of a car did he drive around Tavares?

A. Cadillac, I think. Either a Cadillac or a Lincoln.

Q. No feeling against him at all, was there?

A. None, whatever.

Q. From your knowledge of both races, here, do you think these defendants could get a fair and impartial trial in this county?

A. I think they can. We have had other instances of similar nature and I think that the Court record will show that they have been given a fair trial. It is also possible to get a good jury.

Mr. Hunter: You may inquire.

Cross examination —

By Mr. Akerman:

Q. What is your full name, Mr. Burleigh?

A. Edward Irving.

[fol. 336] Q. You are summonsed on that jury?

A. Yes, sir.

Q. You are Ma-or of Tavares?

A. Yes, sir.

Q. Were you present in Tavares shortly after the arrest of these defendants when an effort was made to remove them from the county jail?

A. I was not in Tavares the night it happened, no. I was over to New Smyrna Beach on that weekend. Saturday and Sunday. I was here Monday morning.

Q. You were out of the county on Saturday and Sunday of that week?

A. Saturday and Sunday of that weekend, yes, sir.

Q. You heard this case discussed or read it in the newspaper?

A. Yes. I would say that I had.

Q. What have you heard about it?

A. Nothing authentic. I have never talked with any of the officials. Only what we have seen in the paper that you would hear in evidence.

Q. You read practically all those papers, I guess?

A. Only the Sentinel and the Citizen. I hadn't seen these others.

Q. You only take your local papers. You don't take the Clermont?

A. Haven't taken any of the other papers or read any of the articles.

Q. You, of course, have read that, the statement that all these defendants are supposed to have confessed to the crime, haven't you?

A. I heard that as hearsay. I don't remember to have read it. May be that I did, but it slipped my mind if I did. [fol. 337] I remember hearing as a hearsay that they had confessed.

Q. You served on juries in Lake County quite often, haven't you?

A. I have. Yes, sir.

Q. Criminal cases?

A. Yes.

Q. Now, in addition to the privilege of serving on the jury, you know what a duty it is?

A. I do.

Q. And I assume that you feel it is the duty that every man should do?

A. It is the duty that every man should do. Absolutely.

Q. And of course you realize the pressure a jury is under to carefully weigh the evidence and decide the case solely upon the evidence that's presented in the courtroom?

A. Yes.

Q. What is your business, Mr. Burleigh?

A. The Lake Abstract and Guaranty Company. Abstract and title insurance.

Q. How long have you been in it?

A. The business was started by my father when the company was started. I have been actively engaged in it since 1925 with an interval out during the war years.

Q. And do you believe that if accepted in this jury that you can completely erase from your mind anything you have heard and read in connection with this case?

A. I am not sure whether I should answer that question or not. As a witness, ask what I should do as a juror.

[fol. 338] Mr. Hunter: I think the objection is well taken. I object to the question.

Mr. Akerman: If the Court please—

The Court: Go ahead and answer the question.

A. Yes. I think that I can do without prejudice because I have been in a similar situation before on juries right here in this courtroom.

Q. The question that I asked was, do you think you can completely erase from your mind what you have read or heard of this case?

A. No. Cannot.

Mr. Akerman: No further questions.

Re-direct examination.

By Mr. Hunter:

Q. Now since he's asked you that question, would you disregard it and try it solely on the evidence?

A. I don't think it is possible to erase anything that you have read or heard. Those things go into the human mind and they stay there. You don't erase them. It could be disregarded.

Q. And try the case solely on the evidence?

A. Yes.

[fol. 339] Q. And try the case solely on the evidence?

A. Yes.

Q. Without any prejudice toward anybody?

A. That's right.

Q. Isn't it frequently the case that cases that you have sat in in this county, that you have read about it in the newspaper?

A. I have.

Q. And disregarded what you have read? You didn't know whether it was true or not?

A. Based the opinion entirely upon the evidence as it was given in Court. We have always been charged that way by the Judge and I think on every jury that I have ever served on that has been held.

Recross-examination.

By Mr. Akerman:

Q. Mr. Burleigh, in making abstracts, you say you and your father have been in the business since Lake County was formed?

A. Right.

Q. Isn't it true on occasions, that your company has made an abstract, you have checked it through before signing your certificate to it, and, from your own knowledge of Lake County records, that you have picked up instruments, judgments, or something of that character that wouldn't be shown on the abstract and sent the abstract back to show those?

A. I don't quite get your point there.

The Court: I don't see that that's got a thing in the world to do with this. You needn't answer the question.

[fol. 340] Q. Do you know a Mr. Arthur Polk, of Eustis?

A. Yes, sir.

Q. Do you know Mr. J. A. McRainy, of Leesburg?

A. Yes, sir.

Q. Do you know Mr. J. G. Rae of Mt. Dora?

A. Yes.

Q. Mr. C. C. Holley of Okahumka?

A. No.

Q. Mr. Arthur H. Bentley of Howie?

A. Yes.

Q. Mr. H. M. Mc— of Altoona?

A. I know of him. I don't know him personally. No.

Q. Mr. Phillip Airey, of Mt. Verde?

A. Yes.

Q. P. M. Cates, of Leesburg?

A. No.

Q. Mr. Burton Brown, of Leesburg?

A. Yes.

Q. Mr. Ross H. Bowen, of Clermont?

A. No.

Q. Mr. John W. Jones, of Paisley?

A. No.

Q. Mr. Percy Hawkins, Grand Island?

A. No. I don't know him personally. I know who he is.

Q. Mr. Simon Pasbare, of Fruitland Park?

A. No.

Q. Mr. Dwight A. Gaines, of Clermont?

A. Yes.

Q. Mr. Gilbert Cartwright, of Umatilla?

A. No.

The Court: Mr. Akerman, what's that got to do with this? It hasn't got a thing in the world to do with it that I can see.

Mr. Akerman: Does the Court rule that I can't ask?

The Court: I do rule. Yes.

[fol. 341] Mr. Akerman: No further questions.

MR. F. L. HAMPTON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your name?

A. Frank Lep Hampton, full name.

Q. Where do you live?

A. Leesburg.

Q. What is your business and profession?

A. I am a life insurance agent. Represent the Central Life Insurance Company of Tampa.

Q. You are a colored man?

A. Yes, sir.

Q. How long have you been in business in this county?

A. I have been living in Leesburg for 18 years the 14th of this month.

Q. You take any part in the activities of the colored race over there?

A. Yes, sir. Practically everything that they start around there, I'm one of the members of it. If it's worthwhile.

Q. Tell us some of the things that you do?

A. Well, the first place, I might state that I have been very instrumental in the elections such as helping to place various men we thought would be of the best choice for the county. Of the Judge, here, I was one of the stump men that worked for him. I guess I was working against you at the same time. I have been instrumental direct-[fol. 342] ing my people, showing them how to vote and in Leesburg, we votes in everything that they have around there. There is no discrimination, whatever, in the city of Leesburg. I can only speak for that.

Q. What about your athletic activities and things of that kind? Do you take any part in those things?

A. Well, no more than a sightseer. But we have the privilege of using the Venetian Gardens at any time that we request when there is no other dates on there. The City has granted us the privilege, whether it's night or day. I might say that because it's quite an expense using the lights at night. They have given us a privilege of using the parks on football games, baseball games, and on our musical festivities for the colored Civic Club, which is the only club that we have in that particular section that's instrumental and working with the Red Cross and city movements and such as that. I happen to be the manager of that particular organization and I have been instrumental in all the civic movements around there.

Q. What is the relation between the colored people and white people in Leesburg?

A. I found it the best in the State of Florida. I have traveled from Key West to Pensacola. I have only missed two towns. That is Lake Wales and Apalachicola, that I haven't got into, and as State representative for the company I represent, and I found Leesburg to be the best town [fol. 343] that I have ever lived in for relationship. Even better than my home town, Jacksonville.

Q. You heard about this rape case down here at Groveland, didn't you?

A. Yes, sir. I have heard about it.

Q. Were you in Leesburg while that was going on?

A. I was in Leesburg from the time I heard it, which I heard it on a Saturday evening, late Saturday evening, before I heard about it. And I was there until the following Wednesday morning, I left on my vacation.

Q. Was there any excitement or any prejudice shown against the colored people in Leesburg by whites?

A. Not in Leesburg. In Leesburg, we housed quite a few of the refugees coming out of Groveland and Mascotte, and there was no disturbance. No one interfered. And even they stayed right across the street from my house and would have been in my home. Some of the refugees. If it weren't I had planned my vacation. My wife was already away and I was leaving in just a couple days, and I didn't know how long they would be there and I couldn't afford to leave strangers in my home.

Q. Wasn't any rioting in Leesburg?

A. No, sir.

Q. Colored people went about their business as usual?

A. Yes, sir.

Q. Colored people tending to their affairs and white tending to their regular routine as usual?

[fol. 344] A. Nothing out of ordinary as I noticed. And I'm around town because I'm an insurance man.

✓ Cross-examination.

By Mr. Akerman:

Q. You didn't go down to Groveland?

A. No, sir. I had no reason to go to Groveland. Fact, I doubt if I would have gone there if I had an opportunity to go, at the time of the uprising.

Q. You mentioned something about some refugees from down in that area? Who were they?

A. Well, they were colored persons who lived. We called them refugees because they were, came away from there on account of the excitement. I understand that a person who leave one place because of a disturbance and if they go to another section, we understood it was a refugee coming from the place of disturbance. So we was there and we assisted in housing. The Club that I mentioned was instrumental in getting housing for them for a few days.

Q. Might call them displaced persons?

A. Well, we can use that term, I suppose. It would be all right.

Q. What club was that?

A. The Nightingale Civic Club.

Q. How many refugees did you have?

A. I'm afraid to say because I taken no count of them, but I do know there was 5 or 6 homes that's near right around me that opened their doors for them without any sense of charging of anything. Just throwed the door open so that they might have a place to rest.

Q. Do you know the Irvin family down in Groveland?
[fol. 345] A. I am not personally acquainted with them. No sir. I am afraid I don't know them.

Q. You don't know where they are?

A. I do not know.

Q. Did you know the Shepard family down there? Lived out from Groveland?

A. No sir.

Q. Did you hear about the burning of the homes down in Groveland?

A. I heard of it. Yes sir.

Q. You are a life insurance, not fire insurance, man?

A. Life insurance. There you are.

Q. You weren't called on to act?

A. No sir.

Q. Do you know a Will Brunson that lives down around Groveland?

A. No sir. I am not acquainted with Will Brunson, either.

Q. You don't know where he is now?

A. I do not know.

Mr. Akerman: No further questions.

Mr. Hunter: That's all.

(Whereupon, the witness was excused and withdrew.)

Mr. PREVATT, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. You live at Tavares, Mr. Prevatt?

A. Yes sir.

[fol. 346] Q. How long have you been here?

A. 24 years.

Q. What is your business?

A. Executive President of the Lake Region Packing Association.

Q. Do you employ many colored people?

A. Well we have on the payroll, today, I expect, in the neighborhood of a hundred. In the winter, we run from 250 to 300, 350.

Q. It's been charged in these affidavits made by counsel that charges were trumped up against the colored people in this county for the purpose of keeping them down and making them work for starvation wages.

Mr. Akerman: To which the defendants object because there is no charge in any affidavit or any pleading to that effect.

Mr. Hunter: I'll just call to the attention of the Court that he read a purported interview with defendants' counsel with him, in which the charge was made, and which he said he believed.

The Court: Objection overruled. Go ahead.

Q. Is that statement true?

A. It is not, sir. Not to my knowledge.

Q. What wages do you pay these colored people?

A. Our men, our minimum wage is 60¢ an hour.

Q. Is that the same as white people?

A. Yes sir.

[fol. 347] Q. No difference, is there?

A. No. They run from that up to 90¢. The highest paid people that we have, laborers, I'll say, in our organization, happen to be colored people. Two men that dump fruit for us, we pay them 90¢ an hour. There isn't another employee in the association that earns that much money as a laborer.

Q. You say you pay common labor 60¢ an hour?

A. Yes sir. We pay our pickers and loaders by the piece.

Q. What will their wages run?

A. Are you talking about piece workers?

Q. Yes. Pickers.

A. Well it depends on whether they want to work or not. We run an average, I would say, an average of \$40 to \$45 a week. We pay, have some pickers that get out and goes to work, that make a hundred dollars a week. I was looking at one a few days ago that made \$150 one week this past season.

Q. Is that the same scale of wages along that line about this county? Packing houses? Pickers?

A. Not only within the county, but over the state in the citrus belt. Yes sir.

Q. They have been making more wages than we fellows that own the groves?

A. They have been making more wages than the growers made up until last year, or, during the war years. Yes sir. Last year after the freeze, the growers come out better. But for the 3 years—2 years previous to that, the laborers got more money out of it—at the end of the day or end of the month than the citrus growers that had their money in the groves got. Yes sir.

[fol. 348] Q. Any colored people here own their homes?

A. Yes sir. We have several that work for us that own their homes.

Q. When this trouble was going on down at Mascotte, through that territory, were there any mobs up here roaming around burning their homes and running them out of town?

A. Not in Tavares.

Q. Know of it in any other part of this county except down around Groveland?

A. I haven't heard of any.

Q. Everything was just as peaceful as any other time?

A. Our men here that was working for us was just as peaceful as they was before anything happened at Groveland. Yes sir.

Q. White people were the same way?

A. Yes sir. There was no difference in them.

Q. You have had a wide experience in this county. Have you ever found any such prejudice that would not allow the colored race to live a normal life in Tavares around this territory?

A. I didn't understand your question.

Q. Is there any prejudice against the colored people in this section?

A. No sir. No. sir. Not that I know anything about, sir. I have never heard of it.

Q. Do you know something of the character of the people of this county? Do you believe these men here could get a fair and impartial trial in Lake County?

A. I do. Certainly do.

[fol. 349] Q. I remember one occasion that you asked somebody to parole a good worker, here. Did you do that? Out of the penitentiary?

A. I have 8 or 10 parolees in my organization. I think I taken 8 out last year.

Q. Did you keep them here and work them on starvation wages?

A. They get exactly what the rest of the employes get, sir. Fact, I have two of them, today, that wanted to go off in the potatoes, thought they could make more money than our scale of wages and we arranged with the parole officer to permit them to go. He still reports to us and we make the report through.

Q. Do you remember of the wages that was paid any of those men last year for picking?

A. Any wages that was paid them?

Q. Yes.

A. Yes. One of the highest paid pickers was a parolee.

Q. These men are parolled out of the penitentiary?

A. Yes sir. Raiford.

Q. Now do you do everything that you can to rehabilitate those men, assist them after they get out?

A. I have. Yes sir.

Q. You have no feeling against them at all. Come and go as they please?

A. Come and go as we please. We treat them just like we do any other colored men, and the white people that works for us. No difference in them. We take care of our people. Some of the homes, we have several colored [fol. 350] men here, as well as whites, that have come to us for help to build homes and we have financed them. Helped them buy the material and paid the labor and let them pay us on a weekly or monthly basis, to own their own homes.

Q. Do you consider that this is a Ku Klux Klan ridden county?

A. No sir.

Q. Do you know of any Ku Klux organization in this county?

A. I do not. No sir. I do not.

Q. Did you ever hear of any?

A. No sir. I have not.

Q. An organization of that kind wouldn't meet with much favor in Lake County, would it?

A. I don't think so.

Mr. Hunter: You may inquire.

Cross-examination.

By Mr. Akerman.

Q. You live here in Tavares, Mr. Prevatt?

A. Yes sir.

Q. You are familiar with the Ku Klux Klan parade into Leesburg the latter part of 1948, aren't you?

A. Why, I heard about it. That's all I know about it. Yes sir.

Q. Now you heard about the burning of the homes down in Groveland?

A. I did. Yes sir. Heard about it.

Q. And the shooting down there?

A. Yes sir. Through the papers.

Q. Do you know the family of the defendant, Walter Irvin here?

A. I do not.

[fol. 351] Q. You don't know where they are?

A. No, I do not.

Q. Do you know the family of the defendant, Samuel Shepherd?

A. No sir. I can't say that I know any colored people in Groveland.

Q. And the same would be true as to Will Brunson?

A. I don't know him. No sir.

Q. Did you know a colored man by the name of Mack Fryer?

A. No sir.

Mr. Akerman: No further questions.

Mr. Hunter: That's all.

(Whereupon, the witness was excused and withdrew.)

Mr. W. L. Story, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. Mr. Story, do you hold any official position in this county?

A. Yes, sir. Supervisor of Registration.

Q. How many white registered voters do you have in this county?

A. 14,182, grand total. Colored voters, 802, leaving 13,380 white registered voters, men and women.

[fol. 352] Mr. Hunter: You may inquire.

Cross examination:

Q. Do you have the breakdown on political parties there?

A. No. I haven't got it here.

Mr. Akerman: No questions.

Mr. Story: We got right around 1200 some-odd Republicans.

Mr. Akerman: Out of the 802 negroes, do you know how many are registered as Republicans and Democrats?

A. 180 Republicans and 2 Independent.

Q. The balance Democrats?

A. Democrats.

Q. No Peoples Progressive?

A. No sir. Don't have one in the county.

Mr. Hunter: White or black?

A. White or black.

Mr. Akerman: That's all.

(Whereupon, the witness was excused and withdrew.)

MR. FRANK E. OWENS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

[fol. 353] Q. What is your name?

A. Owens. Frank E. Owens.

Q. What official position, if any, do you hold in Lake County?

A. Chairman of the Board of County Commissioners.

Q. As Chairman of the Board of County Commissioners, I'll ask you if it is the duty of the county commissioners to place the names of jurors in the box?

A. It is.

Q. Where you present when the regular box was prepared in January, 1949?

A. I was.

Q. In what proportion were the colored people and the white people put in that box?

A. In proportion as the colored people were to the total registration in the county.

Q. You mean the registered colored voters to the registered white voters?

A. Right. We select the jurors from the registered voters in the county as we feel that those who are not registered would not have a sufficient interest in our county to serve on the jury.

Q. Is that made fairly and in proportion of those two numbers?

A. It is.

Q. Was that done in the box in January, 1949?

A. It was.

Q. Was it also done in the box, the special box that you recently made?

A. It was.

[fol. 354] Q. Was there any discrimination, whatsoever, against the colored people in drawing jurors?

A. None.

Mr. Hunter: You may inquire.

Cross-examination.

By Mr. Akerman:

Q. The registration list shows the race of the people. Is that correct?

A. Yes, it does.—Not the list. Does not. No. But the books show it, downstairs.

Q. Well, I mean by that, from what you selected the jurors.

A. It does not. Doesn't show whether they are colored or white.

Q. Didn't you put them in in proportion to that?

A. We do, because we know the colored folks and the white folks.

Q. Now, explain just how the setup of selecting the jury list in Lake County is.

A. We select approximately 400 jurors in the circuit duty in January of each year. The board, as a whole, sits around a table and selects the jury. Allocating to each district, in other words, giving each Commissioner the approximate privilege of selecting the number and as it bears on the total registration in the county.

Q. In other words, the first is the list of registered voters?

A. That's right.

Q. That's a rule that has been adopted by the County Commissioners here? That's not the State law?

A. That's the rule that we have followed for years. Yes. [fol. 355] Q. The State law, as I recall it, requires the county commissioners to select people qualified to serve, good standing in the community.

A. That's right.

Q. And that is the test that you have place. Never call anybody other than a registered voter?

A. That's right. We don't feel that the others are qualified to serve on jury if they do not have sufficient interest to register and participate in our government affairs. That's true both of white and colored.

Q. And I believe you said that—what I mean when I say 'you', I'm speaking of the commission as a whole—selected approximately 400 the first of January?

A. That is right.

Q. And what's that about a special list?

A. We had a special commissioners meeting. It was called, I don't recall the date, now, in, I believe in August. Either July or August. To select additional names to put in so that they might be put in the box as they were afraid that the list would be exhausted and would not be sufficient jurors to serve.

Q. How many did you select at that time?

A. I think somewhere around a hundred. If I remember rightly.

Q. So there should be approximately 500 names in the box?

A. Somewhere close to 500. Yes.

Q. With the usual some having died since you selected and some having moved away. When I say that, I am not trying to pin you down.

A. That's right.

Q. Do you know the number of negroes on the jury list?

A. I do not know the exact number, no.

[fel. 356] Mr. Akerman: That's all.

Mr. Hunter: Now Your Honor, I hate to call the next witness but it is necessary for me to do so because it has been placed in these papers what I consider a serious reflection not only on this Court but on every court in the State of Florida. I refer to section 5 of a document filed here called a motion to quash the indictment. It says that the presence of one negro on the grand jury which returned the indictment against your defendants herein did not result from a fair, impartial or lawful summons, empaneling or drawing of said grand jury. But that State officials who, for over a period of 25 years or more, have systematically excluded members of your defendants' race from grand jury service in the County of Lake; purposely and deliberately placed a negro upon the grand jury for the sole and only purpose of creating an appearance of compliance with the requirements of the Clause of the 14th amendment to the United States Constitution and the Constitution of the State of Florida.

Of course there have been exhibits here. Considerable wild talk. I realize that these gentlemen are doing, as Mr. Akerman said, trying to defend their clients and sometimes, they have been misinformed. But since it is well known that these jurors are summonsed under the supervision of the Court, itself, I think that that is a reflection upon the

[fol. 357] Court and we should meet it with testimony. They made no effort to prove it. Therefore we will have to meet it negatively and I am going to call the Clerk of the Court.

Mr. Akerman: At this time, before the taking of the testimony, I move to strike the remarks of counsel from the record. He has the privilege of calling the witness. I don't think he has the privilege of getting into the record a speech, what is commonly called a jury speech.

The Court: Well both of you have been talking to the wind so the motion is denied.

MR. GEORGE J. DYKES, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. Mr. Dykes, what is your official position in the county?

A. Clerk of the Circuit Court.

Q. Do you remember the drawing of the jury, grand jury, which indicted the defendants in this case?

A. Pardon me. May I ask a question?

Q. You may.

A. The drawing of the men that served on the grand jury after this jury was called here and sworn?

Q. Yes sir.

A. Just the calling of the grand jury?

Q. Yes. That's right.

A. I do.

Q. Did you participate in it?

A. I did.

Q. Who else did?

A. The Judge. Circuit Judge. Judge Futch, present here.

[fol. 358] Q. What member of the Sheriff's office?

A. I don't recall whether the Sheriff, himself, or whether he had one of the deputies.

Q. Just how was that drawing done?

A. To go back to the first, there was the general venire that was drawn. When that general venire was drawn and those men were brought here.

A. I believe it was 36.

Q. How many were drawn?

A. I wouldn't be positive. They were drawn from the jury box.

Q. How?

A. By the Clerk. Took the box. The Sheriff brought the key and we came into the Court. The Judge, himself drew those slips out. Till he got the number that he had that was on that venire.

Q. Were their names recorded?

A. Their names were recorded.

Q. What was done with those slips?

A. The slips were put in an envelope and sealed and are in the Clerk's office now.

Q. Now, what was done with that envelope?

A. It is filed in the Clerk's office.

Q. Now on the day that the grand jury was drawn, were you present?

A. I was.

Q. How was it drawn?

A. The men that constituted that venire were called here in Court. They were tested under the voire dire. Sworn and tested by the Judge. Then after they were tested, these names were put in a box.

[fol. 359] Q. All of them? The 36?

A. All the whole 36.

Then that box was put on the Judge's desk and the Judge drew from that box the names of the 18 men which constituted the grand jury.

Q. The first 18 men constituted the grand jury?

A. Yes. They were drawn out.

Q. Were the names recorded?

A. They were noted as called when he drew out the 18 that constituted the grand jury.

Q. Were their names recorded?

A. They were.

Q. And the drawing was made by Judge Futch, himself, from the box?

A. Absolutely.

Q. Not from the box now, the list of these names?

A. No, they were not. This was from these slips that were prepared. They were drawn.

Q. Put in an envelope?

A. Well, no. That was when the original jury was drawn.

Q. Now that 36 names were put in that box and Judge Futch drew out of that box?

A. When we prepared the list of the jury, that was qualified, and the ones that were qualified, and the ones that were not qualified were excused because they were sick, some possibly excused because they were over age, and claimed that exemption, and so forth. Then those that were qualified, those names were put in the box and the grand jury was drawn from that list.

[fol. 360] Q. Was one colored man drawn on that?

A. He was.

Q. Was there any way for anyone to know until the name was read out that there was a colored man, or any other race, on there?

A. There was absolutely no way for him to have known it.

Mr. Hunter: All right. You may inquire.

Cross-examination.

By Mr. Akerman:

Q. How many years have you been Clerk of the Court, Mr. Dykes?

A. This is 21 years. That is, 21 years and so much on this is 21.

Q. Have you ever heard of a negro serving on a grand jury in Lake County before?

A. I don't recall any having been.

Q. Are you familiar with the rumor that is prevalent in Lake County that they ask to be excused from jury duty?

A. I know that we have had a great many that did. That is, I paid them off because they come and said the Judge excused them. Now I don't know what their reasons were. I do that with a lot of men. They come and say the Judge has excused them for various reasons. And of course, I don't ask him what his reasons are.

Q. Do you know how many negroes there are in the jury list now?

A. I do not.

Q. You don't know what proportion they are?

A. I do not.

Q. And do you know, you say 36 were summonsed for [fol. 361] jury duty?

A. I wouldn't give that as a definite number, I said. Probably was more that were called there at that time. I don't recall without looking at the list because we drew various numbers at various times. Possibly more than that because this was knowing that this was a capital case coming and they usually draw a larger number. I do not give that as a definite number.

Q. Do you recall the number of negroes that were drawn in the 36?

A. No. I don't know whether there was any at all. I didn't know whether there was any in it at all until this one was called and he walked up there. I didn't know it when his name was called. He come up there and he was black.

Q. You were present in the courtroom?

A. Yes.

Q. Were there any other negroes in the prospective venire?

A. I don't know whether there were or not. No.

Q. You didn't look around the courtroom?

A. Oh, yes. I looked at them. Then, I can't tell you who the men were back there. There's been too many of these juries.

Mr. Akerman: That's all. No further questions.

(Whereupon, the witness was excused.)

[fol. 362] Mr. G. E. FORTLAND, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your name, sir?

A. G. E. Fortland.

Q. What is your business?

A. President and General Manager, Citrus Culture Corporation in Mt. Dora. President and General Manager, Grove Management and Fertilizer Manufactures.

Q. Do you hold any official position there?

A. Mayor of Mt. Dora.

Q. Do you employ colored men?

A. Yes sir.

Q. Is there any discrimination against the colored people in your employment?

A. None, whatever, sir. I employ both white and colored labor and work them in mixed crews and there is no trouble, whatever. They get along fine.

Q. Do you recall while this rape trouble was going on?

A. Yes sir.

Q. Any trouble between them?

A. None, whatever, no sir.

Q. Mr. Fortland, was there any rioting or disorder of any kind in Mt. Dora at that time between the colored people and the white people?

A. No sir.

Q. Is there any prejudice against colored people over there that you know about?

A. No sir.

Q. Are they encouraged to have their homes and other property?

A. Yes sir. They are. I have just financed a home for [fol. 363] our maid. I have helped several to build their homes. Our maid has been with us a good many years and she just build a home and I helped her finance it.

Q. Do you try to discourage them from becoming independent so you can employ them for starvation wages?

A. No sir. I pay them just the same as I do the white labor. In fact, I have one colored man who, our lowest rate of pay is 65¢ an hour for labor—and I have one colored man that I pay more than that. Because he operates a machine and can do any kind of work better than some of my white laborers. I pay him extra for it.

Q. Has there been any hysteria over there against the colored race?

A. No sir. None at all.

Q. Well has there ever been any there that you know of?

A. Not that I know of. I have been there 16 years and I haven't ever heard of any trouble.

Q. Wasn't any mobs running around there burning any of their homes?

A. No sir.

Q. Did the colored people, while this trouble was going on, go about their avocations normally as they usually do?

A. There was absolutely no difference. They went as

they always do. My labor came out just the same as they always did and the white and colored worked together just the same as they always have.

[fol. 364]. Q. Do you believe that there is any such prejudice in Lake County against the colored race that would prevent these defendants, because they are colored men, from getting a fair and impartial trial?

A. No sir. I don't believe there is.

Mr. Hunter: All right. You may inquire.

Cross-examination.

By Mr. Akerman:

Q. You are familiar with the occurrence down at Groveland following this affair, are you not?

A. Yes sir. I heard of it.

Q. You are familiar with the fact that three buildings were burned down there?

A. I have never seen them. I have read that they were.

Q. Did you hear that one of them was the home of the defendant, Samuel Shepherd, where he lived, owned by his father?

A. I have heard that. Yes.

Q. Are you familiar with the shooting up of honky tonks down there?

A. All I know about it is what I have heard. I didn't go down there. Was any of the refugees from down there brought to Mt. Dora?

A. I don't know of any.

Q. You are familiar with the fact that the entire colored population of that area down there was removed from the area?

A. I heard that they were removed, yes. Most of them to Orlando. I understand.

[fol. 365] Q. Well we have had testimony, this morning, that there were some in Leesburg.

A. Yes. I didn't know that until I heard it in testimony.

Mr. Akerman: No further questions.

(Whereupon, the Court took a five minute recess, at the end of which time, the following proceedings were had:)

SHERIFF WILLIS McCALL, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. Your name is Willis V. McCall?

A. That's right, sir.

Q. You are Sheriff of Lake County?

A. Yes sir.

Q. Where were you on the 15th and 16th of July, 1949?

A. I was en route from Cleveland, Ohio, to Tavares.

Q. When you got back here, had these three defendants all been arrested?

A. Yes sir.

Q. In paragraph 12 in the application for removal of cause, I find this charge:

"Officials of the County of Lake, in whose custody the defendants are, said law enforcement officials did ask the defendants, 'What are those nigger lawyers putting you up to now?' And when informed by said law enforcement officials that 'those nigger lawyers better watch their step or they would be in jail along with those defendants' "

Did you or any other officials that you know of make any [fol. 366] such statement as that to these men?

A. I didn't make such a statement as that. I read an account where they had made some unjust accusations against me and my men and it was pretty much disgusting and disheartening after having stuck my neck out like I had for the protection of them, to have such statements and I asked them if they were putting that stuff in their heads, too.

Q. All you said to them was that?

A. Yes sir.

Mr. Hunter: You can inquire.

Cross-examination.

By Mr. Akerman:

Q. You made no statements about lawyers being put in jail?

A. Not that I recall.

Q. You recall the conversation following the hearing on the pleadings here?

A. I recall when that statement was made. I made it, myself. The statement I said I made. Not the statement that was referred to there.

Q. What statement did you say you made?

A. I told them to the best that I can recall, I asked them if these nigger lawyers were putting the stuff in their head that they were trying to—the same poison that they were putting in the northern newspapers. That's what I asked them.

Q. Now when was this, Sheriff?

A. It was either on the way back or, at the cell, from the hearing.

[fol. 367] Q. These prisoners were in your custody?

A. Yes sir.

Q. The trial is set for them tomorrow, is it not?

A. Yes sir.

Q. You knew, of course, they were represented by counsel, including me?

A. Yes sir.

Q. And you have questioned and talked to them without their counsel being present?

A. I made that statement to them.

Q. Did you question them after you knew they were represented by me?

A. I think I have a right to question any prisoner I have in jail.

Q. About what he's putting up for his defense?

A. I have a right to question any prisoner that I have in jail regarding the crime that was committed.

Q. Is this regarding the crime that was committed?

A. Everything that I have questioned has been regarding the crime that was committed.

Q. And you asked them if their lawyers were putting them up to something?

A. I asked them if their lawyers were trying to poison their minds the same as they were trying to poison the northern people through the sources of the newspapers. Yes sir.

Mr. Akerman: No further questions.

Mr. Hunter: That's all.

[fol. 368] Mr. Ackerman: If the Court please, at this time, the defendants request in the future the sheriff be instructed not to question or threaten or talk to these prisoners unless their counsel are notified and are present.

The Court: There is no evidence that anything has been said or done to the defendants that was in any way harmful. If the motion was carried out he wouldn't even be allowed to ask them if they wanted a drink of water. Motion denied.

Mr. Akerman: The motion is in connection with the case. I don't think it is fa-r and proper for the Sheriff to inquire as to the confidential relationship of attorney and client and I ask—

The Court: Mr. Ackerman, I have already ruled and I don't care to hear any more from you about it.

MRS. MABEL NORRIS REESE, being first duly sworn, was recalled for further examination.

Re-direct examination.

By Mr. Hunter:

Q. Mrs. Reese, in one of your papers that was introduced here, yesterday, reference was made to a purported story [fol. 369] that was published in Life, I believe.

A. Yes sir.

Q. Now, what was your information on that that caused you to write that in your paper?

A. It was on a Friday, Mr. Hunter, following that incident in Groveland, that I took a trip with a photographer of Life magazine, Wallace Kirkland, who had been called in to Florida by the New York office, and we went with Sheriff McCall, Deputy Yates and yourself, as officials of the County, and took a complete tour of the entire scene of the so-called Groveland story.

Q. How long did it take?

A. Well I think we left here about 10 in the morning, maybe a little before that. I know that Mr. Kirkland had to get breakfast before we started, it was that early. And we got through, I got back to my office about 5:30 in the evening.

Q. They were furnished transportation to go wherever they wished to go?

A. That's right.

Q. They took pictures and interviewed people?

A. Yes sir.

Q. Made no comment about what they heard?

A. Well, yes. I would say they did. I was riding in the——

Mr. Akerman: I'm going to object to anything that any Life photographer or reporter may have said. It was through hearsay.

[fol. 370] Mr. Hunter: He's already introduced that and I am asking what it was.

The Court: At the same time, I don't think she should testify as to anything that somebody else said.

Q. Now, what justification did you have for publishing, as you did in your paper, that that story would come out in Life on a certain date, here?

A. The fact that about 4 o'clock in the afternoon, Mr. Kirkland called the New York office and came back to where we were all gathered and said that he had been ordered to get back to New York.

Mr. Ackerman: I object to anything that Mr. Kirkland said as incompetent to this hearing, to this line of testimony. Irrelevant. Immaterial. And an attempt on the part of the State to delay the cause and keep defense counsel here when they should be preparing for the trial.

Mr. Hunter: You brought it in the case and introduced the question.

The Court: I think I have already ruled that she couldn't testify to any conversation. That she had there, with him.

[fol. 371] Q. You had information, however, that that story would be published for a certain date and you published that in your paper?

A. Very definite information.

Q. Was it ever published?

A. No sir. It was not.

Mr. Hunter: You may inquire.

Mr. Akerman: No questions.

Mr. Hunter: Your Honor, we have many other witnesses here but they will only be accumulative of what has already been testified in this Court and I don't think we would be

justified in going ahead in that class of testimony.

Mr. Akerman: I move that the remark be stricken. The State attorney doesn't have to give the Court any reason.

Mr. Hunter: Well, I'm giving it, though. I think the Court will hear it.

The Court: Go ahead. Objection overruled.

Mr. Hunter: This is a Court of reason.

I am going to call the balance of the State's witnesses and ask the Court to discharge them and let them get their [fol. 372] pay. ~~I don't think it is necessary, as I said, to go any further. Will the following witnesses please come forward:~~

Mr. Akerman: I object to this going into the record. It is not part of that because the number of witnesses called has nothing to do with it.

The Court: Objection overruled.

Mr. Hunter: J. K. Muselle; Phil Fisher, W. F. Law, W. J. Rogers, O. M. Simpson, R. G. Shipes, Jimmie Dickerson, B. Pope, J. C. Trowel, C. J. Turner, G. T. Mattise, Ted Williams,

The Sheriff: Mr. Turner was not served. He is out of the State.

Mr. Hunter (Continuing:) Jim Wade.

Now I would like to have the Court discharge those witnesses and tell them to get their pay.

The Court: Witnesses whose names have been called are discharged. Call on the Clerk for your per diem and mileage.

Mr. R. G. Cassidy, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

[fol. 373] Q. What is your name?

A. R. G. Cassidy.

Q. Do you now hold any official position in this county?

A. I do.

Q. What is it?

A. Lake County Tax Assessor.

Q. Is it part of your duty as Lake County Tax Assessor

to allow under the law the granting of homestead exemptions?

A. It is.

Q. Is there any discrimination against the colored people in that respect in your office?

A. None, whatever.

Q. Mr. Cassidy, do you know how many homestead exemptions are allowed colored people in this county?

A. No sir. I don't. For the reason that our printed forms make no distinction and we make no distinction in receiving them or filing them, filling them out or sending them out.

Q. You do not know the exact amount?

A. No sir. I don't know the exact amount.

Q. How many do you know to be colored people who are exempt in this county?

A. We went through our files and from personal knowledge of the individual, and other ways that we could tell, I am positive that there were 435. I am also positive that there are many more but I don't know how many.

Mr. Hunter: You may inquire.

Cross-examination.

By Mr. Akerman:

[fol. 374] Q. Did you examine to see whether Henry Shepherd was allowed a homestead exemption?

A. No sir. I think that he was, but I could check in a few minutes and tell you.

Q. Down near Groveland?

A. Yes sir.

Q. Would your records show what that consisted of?

A. You mean description of his property? Or just what do you mean?

Q. Yes.

A. The card would indicate what was on the property.

Q. In other words, would indicate the number of acres in his farm?

A. Yes sir.

Q. And what improvements, if any, were on there?

A. That's right. Unless it was a subdivision. Then it would be lots and blocks.

Q. You don't know whether your records indicate now

whether or not that you had to re-assess this property because the buildings had been burned down on it?

A. It would not be re-assessed because it is as of the first of the year. If it had been burned. It was burned since the first of the year, it would show up next year.

Q. Have to be re-assessed next year and you haven't got around to next year's work?

A. That's right.

Q. Do your records show whether Cleveland Irvin owns property?

A. Yes sir.

Q. And if Cleveland Irvin is not residing on that property as his home on January 1st, next year, he will not get a homestead exemption. Is that right?

A. That's right. You want to know now, if Henry [fol. 375] Shepherd and Cleveland Irvin are exempt?

Mr. Akerman: I'm satisfied.

Mr. Hunter: Bring your card up here. I want to see about this big farm that Shepherd is supposed to have.

Mr. Cassidy: We are to bring Henry Shepherd and Cleveland Irvin. Is that right?

Mr. Akerman: That's right.

Mr. Hunter: Yes.

(Whereupon, the witness was excused and withdrew.)

MR. R. E. NORRIS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your name?

A. R. E. Norris.

Q. Do you have a job or position in this county?

A. Yes sir. County Agricultural Agent.

Q. How long have you been in that position?

A. 13 years.

Q. In that capacity, did you work with the colored farmers of the County?

A. Yes, I do.

Q. What is your relation with them?

A. Very good.

Q. Any discrimination shown them?

A. No. None, whatever.

Q. Do they participate in your county fairs?

A. I don't know that we have had any entries in county fairs.

Q. Haven't they had a colored building in every fair we ever had in the county?

A. That's correct.

Q. Participated in those?

A. I'm thinking of livestock. Yes. They have a building of their own.

Q. And they have exhibits there?

A. They have exhibits there.

Q. Do you know of any prejudice against these colored farmers?

A. I don't know of any, Mr. Hunter. For example, last year, the U. S. Department of Agriculture released a new long staple cotton. There were only 12 bushels released in Lake County. In an effort to determine who should get the cotton, we turned it over to the veterans. G. I. Veterans training classes. Colored boys had the same opportunity as the others and they took it. Planted the seed and grew the cotton.

Q. Has anybody, to your own knowledge, ever disturbed these farmer- and tried to keep them from getting ahead?

A. I have no knowledge of it at all. The farmer population in the county, colored, between the years 1940 and '45, jumped 50%. Approximately 50%. A little over 50%. And the record of the U. S. Bureau of census shows that 75% plus, a little over 75% of all the colored farmers in the county are full owners.

[fol. 377] Q. Of their own farms?

A. They own their own farms and are not sharecroppers.

Q. Did you know this man, Henry Shepherd?

A. No, sir. I did not.

Q. Was he a farmer in this county under your bureau?

A. I couldn't say whether he was or was not. I just don't know.

Q. If he was, you never had any call?

A. Never had a call to go to the place.

Q. You are frequently called by colored farmers?

A. Oh, yes. Part of the job.

Q. And always went?

A. Colored farmers are eligible of course, to full membership in the Lake County Farm Bureau where they are eligible to receive the Blue Cross hospitalization program on the same basis as the white people and they are eligible, too for the automobile insurance program which is available to members of the Farm Bureau.

Q. Have you ever heard of a single instance of discrimination against a farmer because he was a colored man?

A. No. In a great many instances, white folks, including myself, go around seeing them once in a while about getting some ideas on how to grow crops that they are especially good at growing. Such as melons, sugar cane. They are born knowing how to grow those crops and we get information from them quite often.

[fol. 378] Mr. Hunter: No questions.

Mr. Akerman: No questions.

(Whereupon, the witness was excused and withdrew.)

Mr. CASSIDY, recalled testified as follows:

Redirect examination.

By Mr. Hunter:

Q. Mr. Cassidy, do you have Henry Shepherd's card with you?

A. Yes, sir.

Q. Please tell the Court what it shows?

A. Henry Shepherd's card shows that he owns tracts 8, and tract 24 and 25, section 35 Tp. 22 Range 24, in Groveland Farms.

Q. What improvements are shown on it?

A. He has a house, is the only improvements that are shown.

Q. Any farm?

A. Well he, the land doesn't indicate whether it is a farm or not.

Q. What's the assessed valuation?

A. Total assessed valuation is \$500.00.

Q. And that is totally exempt from taxes?

A. Let me correct that just a minute. He gets an exemption which cuts off of that assessed value. The assessed value that he pays taxes on is \$400.00. The total assessed

[fol. 379] value is \$900.00. He gets a \$500 disability exemption, which the law entitles him too, also.

Q. Did you know Henry Shepherd?

A. No. I don't know him personally.

Q. You don't know what he does?

A. No sir.

Q. All right. Now, the other you have got there?

A. Cleveland Irvin. Receives homestead exemption on North 185' of lot 7, and north 185' of West half of lot 8, block 3, Bressler's Subdivision, in Groveland.

Q. What is this value?

A. The total value is \$900.00. He receives homestead exemption.

Q. All right.

A. I have another one, here. Will Brunson. Receives homestead exemption on the SE corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, run West 902.58 ft, North 417.42, West 17.42 ft, North 374.58 ft, East 330 ft, North 264 ft, West 330 ft, North 264 ft, East 1320 ft., South 1320 ft, to point of beginning. That is in Section 16, Township 22, Range 24, in Lake County.

Q. How many acres?

A. That's 34 acres. On that he has a house and the 34 acres of total valuation of \$900.00.

Q. Does he get homestead exemption?

A. He gets homestead exemption. He's got homestead exemption, this card would indicate, since 1945. Maybe before that. On another card.

[fol. 380] Q. Do you know how far that Shepherd's place is from the town of Groveland, proper?

A. No. I could look in the plats and tell you, but I don't know offhand.

Q. It is not in the town of Groveland?

A. No sir. It is not inside of the town of Groveland. The only one that's inside of the town of Groveland is Cleveland Irvin, in Bressler's Subdivision. The others are outside of the city limits.

Mr. Hunter: You may inquire.

Recross examination.

By Mr. Akerman:

Q. In that Henry Shepherd card, do you have it broken

A. Yes, sir.

Q. Give the breakdown, please?

A. House is valued at \$450.00. And he has 25 acres of land—30 acres of land. Total valuation of \$457.00. We go to even dollars. However, the \$117 is a hundred.

Q. What is your assessment as compared to the actual market value?

A. Well, we take a long range view of it. We assess a full value. But it is not the present inflated value at the present time.

Q. How much? I mean, what difference would you say?

A. Well, that, I don't know. It sells for two or three times as much.

Mr. Akerman: No further questions.

[fol. 381] Redirect examination.

By Mr. Hunter:

Q. Mr. Cassidy, I understood you to testify that Irvin had homestead exemption but if his house was burned, he couldn't get homestead exemption after the 1st of January. Is that right?

A. It would be for the year, because our records are as of the first of the year. The house was there at that time. If there's no house there the first of next year, he won't get homestead exemption. Unless he builds another house.

Q. Which ones are you referring to?

A. Any of them.

Q. Have you ever heard anything about Irvin's house not being there?

A. No sir.

Mr. Akerman: If the Court please, the testimony was as to Shepherd.

Q. But now under the law, if he can show it was burned and not his fault, the 1st of January, he can still get his homestead exemption?

A. He has to be living on the property and making it his home.

By Mr. Buoy:

Q. You mean you can't get homestead exemption unless you are actually living on the property?

A. That's right. Must be making it your home. You can leave it periodically but it must be your home.

Q. But if his home was burned through no fault of his, and if there was a homestead exemption on it, if it was burned and he hasn't been able to get the material and [fol. 382] supplies to build another or the money necessary to build another, wouldn't he be entitled to homestead exemption for the coming year? For the coming year, 1950?

A. Yes sir. He must be living on the property.

(Whereupon, the witness was excused and withdrew.)

SHERIFF McCALL, recalled, testified as follows:

Redirect examination.

By Mr. Hunter:

Q. Are you familiar with the Henry Shepherd place?

A. Yes sir.

Q. How far is that from Groveland, proper?

A. Somewhere in the neighborhood of 2½ or 3 miles.

Q. What were the improvements on the place?

A. There was a house, kind of a little smoke house, and garage shelter with no sides except on the ends.

Q. Any farm?

A. There was a little piece of ground cleared up back there. I was called down there one time about some corn that had been eaten with cows, and evidently hadn't fertilized the corn and it was about that high and yellow and had little nubbins about that big around and about that long once in a while, here and there. Not a very good stand of it.

[fol. 383] Q. How much land was under cultivation?

A. I don't just recall the exact amount but it was a small plot of ground. I would say 3 to 5 acres, maybe.

Q. Do you know what Henry Shepherd did?

A. He worked somewhere in Clermont, I understand. Cooked or something for a bar over there.

Q. Price's place?

A. Yes sir.

Q. He was not a farmer?

A. No sir. He was not a farmer. He had about a dozen chickens.

Mr. Hunter: You may inquire.

Recross examination.

By Mr. Akerman:

Q. What's down there now?

A. There's this barn.—Not a barn, well, it is a shelter. And this smoke house. The house is not there.

Q. What happened to the house?

A. The house was burned.

Q. When?

A. I'll have to stop and think of the day. It was Monday night, after the 16th.

Q. Do you know who burned it?

A. No sir. I do not know.

Q. Did you investigate to find out?

A. Yes sir.

Q. Are you now investigating?

A. Well not right now. But I will further investigate it if I have anything further to work on. If you have anything I'll be glad to welcome it.

[fol. 384]. Q. Were you down there at the time it was burned.

A. I went by there while it was burning. Yes sir. But at the time I got there, the spectators were there, so many till I couldn't even get any tire prints or footprints or anything. There must have been a hundred people milling around there at the time I come there. Because soon as the fire lit up people begin to swarm there from every direction.

Mr. Akerman: No further questions.

Redirect examination.

By Mr. Hunter:

Q. Sheriff, there was another house burned down near that place, wasn't it? Two of them?

A. Yes sir. There was two more across the road from there.

Q. Do you know whose house that was?

A. It was George Valaree's.

Q. What business is he in?

A. He's a crystal gazer. He would tell your fortune and tell what number is going to fall on Cuba. He didn't deal in the Cuba numbers like I have heard about, but he would tell you the number if you would pay him the price.

Q. What kind of a clientele did he have?

A. He had both white and colored, that didn't have any better sense than to listen to that kind of stuff.

[fol. 385] Mr. Hunter: That's all.

Recross examination.

By Mr. Akerman:

Q. He wasn't a Boleta?

A. He didn't sell. He would tell you what number was going to fall. That's the information I got. He may have sold, but I don't believe he did.

Q. There is some antipathy toward boleta peddlers down there?

A. There is everywhere, I guess.

Q. Tim Singleton a peddler?

A. He has been.

Q. Any antipathy towards him?

A. What do you mean, 'antipathy'?

Q. Ill feeling.

A. Well, there's not particularly that I have heard about except occasionally you hear. He runs a negro jook down there and he might sell a little moonshine down there. As far as I know, most of them do.

Mr. Akerman: No further questions.

Did you call Willie Padget?

The Sheriff: I called Willie Padget and he is not on the premises.

Mr. Hunter: Is he under summons by defense?

Mr. Akerman: He is.

The Court: He was yesterday. He was on the stand, here. At the conclusion of his testimony he was asked [fol. 386] as to certain other information. And also told that if he found any to let you know. And also asked to be back here.

Mr. Akerman: Call Emmett Peter.

The Sheriff: I haven't seen him this morning.

Mr. Akerman: You say you did talk to him on the phone?

The Sheriff: I talked to him on the phone after 11 o'clock last night and he was out of town at the time he contacted the office yesterday and got the message just about 30 minutes before he contacted me. And told me that Mr. Newton was out of town, would not be available but that

he would bring the information necessary up here and act in Mr. Newton's stead and bring the copies of the papers.

(Thereupon, the following witnesses were called by counsel for defense:

B. M. Newton, John Doe, agent of the FBI, subpoenaed by the defendants on or about August 7th.

The Sheriff: I contacted Mr. Carson, in Miami by telephone and told him that we had a summons for John Doe and Richard Roe, who had investigated this matter in [fol. 387] Raiford?

(The name of Richard Roe was then called.)

Mr. Hunter: Who is Mr. Carson?

The Sheriff: Mr. Carson is the Chief Investigator of the FBI in the State of Florida, in Miami.

Mr. Hunter: Did he tell you whether Richard Roe or John Doe were working for him?

The Sheriff: He said they were not.

Mr. Akerman: If Your Honor please, those are the witnesses we would like to present. We attempted to get them here by subpoena.

The Court: Well, did you post any per diem and mileage?

Mr. Akerman: No sir.

Mr. Buoy: I would like to inquire when the praecipe for summons was issued.

The Sheriff: About noon, yesterday. I had them handed [fol. 388] to me just before recess for lunch. They called for their appearance here at 10 o'clock, yesterday morning.

Mr. Hunter: You were unable to locate John Doe and Richard Roe?

The Sheriff: Yes sir.

Mr. Hunter: Does Emmett Peter live in this County?

The Sheriff: No sir. He lives in Hillsboro County.

Q. What information did you find out about this other fellow? What was his name?—Newton.

A. He was out of town and would not be available but Mr. Peter agreed to bring the necessary information and be here this morning and he is evidently on his way here because I know his intentions were good.

Mr. Hunter: Do you have any other witnesses?

Mr. Akerman: No other witnesses.

The Court: Mr. Wood reports that Mr. Peter called at 10:30 and said he was having car trouble and was leaving Tampa at that time. That would put him here about 12:30, maybe a little more. I don't think he can make it any quicker than that, the way he drives usually.
[fol. 389] We will adjourn this hearing until 1 o'clock, if there is no objection.

The Sheriff: Judge, while I'm on the stand, I would like to make a statement I forgot about a while ago about this George Valaree.

Mr. Hunter: OK. Go ahead.

The Sheriff: There was quite a resentment against George Valaree among the colored people as well as the whites in Groveland area. He had them all believe he could cast a spell over them and had them worried and of course the white people didn't — him worrying the help and didn't like anybody like that and you'll find that there is about as much resentment among the colored people there as well as the whites against George Valaree. And when he left here, he called mack one of the citizens in Groveland and told them that he had left.

Mr. Akerman: Did you hear the call?

The Sheriff: It was delivered to me to investigate.

By Mr. Akerman:

Q. He didn't call you?

[fol. 390] A. I had information that he left a little girl there, 7 years old, in one of those houses. The highway patrol and city policeman and one of my deputies made a trip out there and searched the houses. They wanted the child put on the bus and sent to them. They searched the houses and searched the outbuildings and searched the woods surrounding the houses for this kid, thinking that she had wandered into the woods. And on several occasions, the patrol car went back out there and shined lights around, looking for this child and this was when there was no crowds in that vicinity that night. The crowd, at that time was all in Mascotte. This is merely my opinion; but it has been working on my mind in the back of my mind, and I am just still believing that there is some subversive activity.

Mr. Akerman: Object to any opinion on the part of this witness.

The Court: Objection sustained.

The Sheriff: I'll still welcome any information you find as to who burned the houses.

(At this point, the Court took a recess until 1:30 PM, at which time, the following proceedings were had:)

Mr. Akerman: Call Mr. Peters.

(The name of Emmett Peter was called by the Sheriff.)
[fol. 391] (The Sheriff announced the witness called not present.)

Mr. Akerman: Willie Padget?

(Whereupon the name was called by the Sheriff and announced not present.)

Mr. Buoy: John Doe and Richard Roe.

(Whereupon, the names were called by the Sheriff and announced not present.)

Mr. Akerman: What is the pleasure of the Court?

The Court: Defendants' additional witnesses having been called and not appearing to be present; no motion having been made to the contrary, hearing on the motions now under consideration will be closed.

Mr. Akerman: Does the Court desire argument on the motions?

The Court: You may argue if you like.

Mr. Akerman: Pleasure of the Court. We have some authorities that we'll present if the Court wants them.

The Court: Well if you have any authorities, I would like to have your references to them.

[fol. 392] Do you gentlemen want to argue?

Mr. Hunter: I don't.

(Whereupon, counsel then argued the motions to the Court.)

The Court: Both the State and the defendants having give the Court certain authorities that they wish considered, we will recess Court until 3 o'clock, at which time I hope to be in a position to announce a ruling on the motions as presented.

(The Court then stood at recess until 3 o'clock PM, at which time, the following proceedings were had.)

Mr. Akerman: If the Court please, before announcing your decision, Mr. Peter, the witness who was absent when called, is now present. We would like to reopen the case for the purpose of introducing the testimony by him, and state at this time, in an effort to expedite the case, if we are allowed to reopen, we'll only prove the circulation figures and offer the papers of the Tampa Tribune. It will only take a short period of time.

The Court: The request is granted.

Mr. EMMETT B. PETER, being first duly sworn, testified as follows:

Direct examination.

By Mr. Akerman:

[fol. 393] Q. State your name, please, sir?

A. Emmett B. Peter, Jr.

Q. Are you connected with the Tampa Tribune?

A. Yes sir.

Q. A newspaper published in Tampa, Hillsboro County, Florida?

A. That's correct.

Q. Do you have the circulation figures of the Tampa Tribune in Lake County?

A. I do.

Q. Give us those figures, please, sir?

A. Our daily circulation for July was 1,667 copies on weekdays, and 1,826 copies on Sunday.

Q. Do you have with you the papers from July 15th until today.

A. I do.

Mr. Akerman: Defendants offer in evidence as a group, exhibit, the articles appearing in those papers pertaining to this trial.

The Court: No objection?

Mr. Hunter: No sir.

Mr. Buoy: Do you want the same ruling?

By the Court:

Q. Do you want those papers back?

A. I would like those back.

[fol. 394] The Court: That will be admitted under the same ruling.

Mr. Hunter: I would like to have this reopened again for just one purpose, to get into the record a circular signed by the NAACP, 20 West 40th Street, New York 18, New York, and circulated in this county, a statement in reference to this case which I think is material.

(Whereupon, the extract was read by counsel) (Readings)

"Violence Flares in Groveland. Automobiles from Georgia, Alabama, and neighboring Florida Counties move surreptitiously into the area."

Mr. Hunter: I would like to introduce that as part of this record.

Mr. Akerman: No objection.

RULING ON APPLICATION FOR REMOVAL.

The Court: We will take up, first, the application for removal of cause.

Being a regular subscriber to four daily papers that are circulated in Lake County and having access to practically all the county papers, I am thoroughly familiar with the handling of this matter by the Press and was relieved of the necessity of perusing all the various newspaper items that have been introduced. The motion for removal of [fol. 395] cause does not comply with what I understand the requirements of such motions to be in the laws of Florida, but the State saw fit to join issue on the relevant portions of the application.

A great deal of time has been spent in the introduction in evidence of certain newspaper articles. Very little evidence of any other nature has been introduced and nothing has been introduced to show the slightest necessity for the removal of this cause to another county. So far as the defendants are concerned, no evidence has been introduced to support their allegations of prejudice, of violence, or threatened violence and it is ordered that the motion for removal of cause be and the same is denied.

RULING ON MOTION FOR CONTINUANCE

The motion for continuance likewise does not meet the requirements. It states on its face no cause for continu-

ance. But the State treated it as it did the motion for removal of cause and it was agreed that the testimony taken should be applicable and considered under both motions. One of the attorneys of record in this case has been connected with it in one capacity or another, according to his statements, since the 31st day of July. And, according to his statements made a sufficient investigation to convince him of the absolute innocence of the defendants. And I can't imagine a lawyer coming to that conclusion without making a pretty thorough investigation. Enough time has been spent on motions to have thoroughly prepared this or most any other case and there is no showing of any witnesses desired or any testimony that's desired that can't be obtained.

The motion nor the evidence meet the requirement of the rule.

[fol. 396] It is therefore ordered that the motion for continuance be and the same is denied.

Trial is set, I believe, 10 o'clock, tomorrow morning.

You of course have your exceptions to those rulings.

(The Court then stood at recess until 10 o'clock AM, September 1st, 1949.)

[fol. 397] (The Court opened at 10 AM, September 1, 1949.)

(State announced ready for trial)

The Court: What says the defendant?

Mr. Akerman: Not ready, if Your Honor please.—Do you mean all three cases?

Mr. Hunter: There's only one case.

Mr. Akerman: I know, but all three defendants.

At this time, the defendants wish to file their challenge to the panel.

The Court: Go ahead.

(Whereupon, the instrument was read aloud by counsel.)

(During the course of the reading the following occurred:)

Mr. Hunter: Just a minute, Your Honor, the defendants are not in the Courtroom.

(Whereupon, the proceedings were halted until the defendants were brought into Court, at which time, the Court proceeded as follows.)

[fol. 398] The Court: You say you have a motion to present in behalf of the defendants?

Mr. Akerman: Yes sir.

The Court: Proceed.

(Whereupon Challenge to the Panel was read aloud by Counsel.)

Mr. Akerman: And that is sworn to by the defendants.

Mr. Hunter: To this challenge the State denies each and every material allegation therein contained and we move and request the Court to permit the use of the evidence heretofore taken on other motions in this cause to be used and applied to this particular motion.

Mr. Akerman: We join in the request of the State's attorney that the evidence heretofore taken in connection with other motions be considered as evidence in connection with this motion.

The Court: The evidence as taken before the Court with reference to other motions interposed by the defendants, i.e., motions for change of venue and motions for continuance, will be taken and considered as evidence applicable to this motion.

[fol. 399] And this motion is denied.

Mr. Hunter: Your Honor, I would now like to state that the State will be represented by the State Attorney, J. W. Hunter, Assistant State Attorney, A. B. Buoy, and Mr. W. B. Hunter. Mr. Hunter was sworn my assistant in the hearing of these motions. If it is necessary for him to be re-sworn in this case, I would like to have that done at the present time.

Mr. Akerman: If the Court please, the defendants were present when Mr. Hunter was sworn in connection with the motions and it is our belief that is the requirement of the law and if it does not, we waive any objection to Mr. Walter Hunter being assistant to the State Attorney.

Mr. Hunter: The State now inquires who represents the defendants.

Mr. Akerman: The defendants in this trial are represented by Alex Akerman, Jr., Joseph E. Price, Franklin Williams, upon special permission given by this Court as the said attorney is not a member of the Bar of Florida, and Horace E. Hill, a member of the Bar of the State of Florida.

Mr. Hunter: Let me interpose there, the State is willing that the same permission be granted to W. D. Hunter in the preparation and trial of the motions apply to Williams in the trial of this case.

The Court: So ordered.

[fol. 400] RENEWAL OF MOTION FOR CONTINUANCE

Mr. Akerman: If the Court please, at this time, the defendants, Charles Greenlee, Samuel Shepherd, and Walter Irvin move the Court for a continuance in this case upon all of the grounds heretofore set out in their motion for continuance and amendment thereto and request that the same be considered as a part of this motion and upon the further ground that said defendants' counsel have, since the employment of said defendants' counsel, Alex Akerman, Jr., been busily engaged in the preparation of motions and hearings on motions in this case to the extent that they have not had time to prepare for the defense of this trial upon its actual trial and are not ready to proceed to trial.

Mr. Hunter: The State opposes that motion. The same questions were raised in the motions for continuance in this Court and we ask that the evidence taken heretofore on those motions apply to this particular motion and that the motion be denied.

The Court: The same questions were presented by the written motion for continuance that was denied by the Court on yesterday and the Court now denies the renewal of said motion and the amendment thereto.

Mr. Hunter: We are ready to proceed in selecting the jury, Your Honor.

[fol. 401] Mr. Akerman: Defense has no further motions at this time and if required to go to trial, we will proceed.

The Court: It is the order of the Court that the trial do now proceed.

Mr. Hunter: Now, Your Honor, I would like to ask—I don't know whether it's been done or not—that the record show that during these entire proceedings the defendants and their counsel are present.

The Court: Let the record so show, Mr. Reporter.

(Whereupon, the names of Arthur Polk, T. K. Bennett, Gordon Richardson, were called by the Clerk as jurymen.)

The Court: These gentlemen were not in the Courtroom the other morning when the panel was qualified in general.

Are there any other members of that jury that were not here when the jury was qualified Monday morning?

I think these are the only three.

(Whereupon, the said three men were sworn and qualified on voir dire.)

Mr. Hunter: The State is ready.

[fol. 402] The Court: What do you say, Mr. Akerman?

Mr. Akerman: Proceed.

(Whereupon, the following jurors were called to the box:)

J. P. Driver, Gilbert S. Crow, Ralph Burns, O. G. Calhoun, B. K. Fergeson, J. E. Dykes, Edward A. Wineman, Troy R. Beasley, Reed Holinger, Bernard Griffis, B. B. Green, Andrew Postella.

Mr. Hunter: Your Honor, I would like to ask permission to have Mrs. Blackman, who is a State employed stenographer in my office, sit with me during the empaneling of the jury.

The Court: Be no objection to that.

Mr. Akerman: No objection, Your Honor.

Mr. Hunter: Gentlemen, as a body, this is a case of the State of Florida vs. Samuel Shepherd, Walter L. Irvin, Charles Greenlee, and in the indictment, Ernest R. Thomas. [fol. 403] Ernest R. Thomas is now deceased. And the defendants, Shepherd, Irvin, and Greenlee, are placed on trial. They are charged with raping a woman by the name of Norma Padget, who lives in the south end of this county, Bay Lake, near Mascotte.

What is your name?

A. B. B. Green.

By Mr. Hunter:

Q. Where do you live, Mr. Green?

A. Tavares.

Q. How long have you lived here?

A. 35 years.

Q. What business or profession are you in?

A. Citrus grower.

Q. Citrus grower?

A. That's right.

Q. You have heard the statement of this case. Have

you heard any of the facts of circumstances in connection with the case discussed?

A. I have not.

Q. Have you read about the case in the newspapers?

A. Yes. I read about it in the paper.

Q. Do you know anything about it? What evidence will be produced here, today?

A. I do not.

Q. Did the reading of these newspaper articles cause you to form or express an opinion as to the guilt or innocence of these particular defendants prior to hearing the evidence in the case?

[fol. 404] A. Not at all.

Q. Do you feel that you could try this case fairly and impartially between the State or Florida and those men?

A. Yes sir.

Q. Have you any such prejudice against the colored race or against these defendants that would, in any way, hamper you in the trial of this case and give them a fair trial?

A. Not at all.

Q. What is your name, sir?

A. Reed Hollinger.

Q. Where do you live, Mr. Hollinger?

A. Paisley.

Q. What is your business?

A. Farming. Have a little citrus.

Q. Are you a citrus grower and a farmer?

A. Yes.

Q. Now what part of this county is Paisley?

A. I guess you would call it the northern end. Between Umatilla and Deland.

Q. You have heard the general statement of the charge in this case read just a minute ago, did you not?

A. Yes sir.

Q. Do you know any of the facts or circumstances in connection with that case?

A. No sir.

Q. Have you ever heard the facts in the case discussed?

A. No sir. I don't believe I have.

Q. Did you read about this matter in the newspaper?

A. Yes sir. I read a little of it in the papers.

[fol. 405] Q. Did you read enough of the actual facts in the case to form or express an opinion as to whether or not these particular defendants are guilty or innocent?

A. (Indicating no by head.)

Q. Do you have any prejudice against the colored race which would embarrass you in any way in rendering a verdict of guilty or not guilty in this case after hearing the facts?

A. None, whatsoever.

Q. Do you feel that you could give these defendants a fair and impartial trial?

A. I do.

Q. And you will do that if you are chosen as a juror?

A. Yes sir.

Q. What is your name, sir?

A. Roy Beasley.

Q. Mr. Beasley, where do you live?

A. Mr. Dora.

Q. What's your business?

A. Grocery.

Q. Mr. Hollinger, how long have you been in this county?

A. Right around 10 or 11 years.

Q. Where are you from?

A. Born in the corner of Marion County.

Q. You are a native Floridian?

A. Yes sir.

Q. Where are you from, Mr. Beasley?

A. Mt. Dora.

Q. How long have you lived there?

A. About 20 years.

Q. What kind of business did you say you were in?

A. Grocer.

[fol. 406] Q. You heard the statement of this case?

A. Yes sir.

Q. Have you ever heard the facts in this case discussed?

A. Well I wouldn't say they were facts. I read the papers.

Q. Don't know whether they were facts or not?

A. No sir.

Q. After hearing these facts or reading these newspaper reports,—it's common now that all intelligent men now read the newspapers, isn't it?

A. Well, most of them.

Q. Do you feel that what you read in the newspaper would affect you in the least bit in the reception of the actual evidence in this case?

A. No sir. I don't think it would.

Q. Do you have any fixed prejudice against the colored race which would impair you in any degree in the trial of these men because they are colored men?

A. No sir.

Q. If you are taken as a juror in this case, will you give both sides, the State of Florida, and the defendants, a fair and impartial trial on what you hear from the witness stand, here?

A. Yes sir.

Q. What is your name, sir?

A. J. E. Dykes.

Q. Where do you live, Mr. Dykes?

A. I live about 6 miles from Umatilla.

Q. What do you do?

A. Farming. Have a very small scale.

Q. You lived here a long time?

A. Yes sir.

Q. Have you ever heard the facts or circumstances in connection with this case discussed?

A. No sir.

Q. You have read about it in the paperr, have you?

A. Yes.

[fol. 407] Did you form or express an opinion as to the guilt or innocence of the defendants from those facts?

A. No sir.

Q. Could you totally disregard what you read? And try this case on the sworn testimony that will be presented here to you?

A. Yes.

Q. You will do that if you are taken as a juror?

A. Yes sir.

Q. Do you have any prejudice against the colored race as a race that would embarrass you in any way in the trial of this case?

A. No sir.

Q. You believe in giving a colored man the same fair and impartial trial you would a white man, do you not?

A. Yes sir.

Q: What is your name, sir?

A. Calhoun.

Q. Where do you live, Mr. Calhoun?

A. Mt. Dora.

Q. How long have you lived down there?

A. 3 years.

Q. Where are you from, originally?

A. South Carolina, originally.

Q. What business are you in?

A. Farmer.

Q. You have heard the statement of this case. Have you ever had any of the facts or circumstances, known to be such, discussed in regard to this case?

A. I am just in the position of the other gentlemen. I have read the papers. I have not heard anyone discuss it who had any firsthand information.

Q. Could you after reading those papers, hear the sworn [fol. 408] testimony in this case and give a fair and impartial verdict?

A. I feel that I could.

Q. Do you have any such prejudice or any prejudice against the colored race that would in any way embarrass you in the trial of this case any more than it would in a trial of a white man?

A. None, whatsoever.

Q. If taken as a juror will you give both sides a fair and impartial trial?

A. Yes.

Q. From the evidence?

A. Yes sir.

Q. What is your name?

A. Driver.

Q. Where do you live, Mr. Driver?

A. Sorrento.

Q. How long have you lived out there?

A. About 5 years.

Q. What is your business or profession?

A. Machinist.

Q. Have you heard any of the actual facts in regard to this case discussed?

A. No sir.

Q. Have you read about it in the newspapers?

A. I have.

Q. Could you, in your—is your mind in such condition that you could hear the testimony and give a fair and impartial verdict regardless of what you read in the newspapers?

A. Yes sir.

Q. Do you have any prejudice against the colored race that in any way would embarrass you in the trial of this case?

A. No sir.

[fol. 409] Q. If taken on a jury, will you give both sides a fair and impartial trial?

A. I will.

Q. From the evidence and the charge of the Court?

A. Yes.

Q. What is your name, sir?

A. Gilbert Crow.

Q. Where do you live?

A. About halfway between Umatilla and Eustis.

Q. How long have you lived there?

A. 2 years.

Q. Have you heard any of the facts in regard to this case discussed?

A. Not to know them as facts, I didn't. I have heard it discussed.

Q. You have not talked to any of the witnesses that you know of?

A. No sir.

Q. Read the newspapers?

A. No sir.

Q. You didn't read anything in the newspapers about it?

A. No. I heard it on the radio.

Q. Now would the fact that you heard this discussed, heard it on the radio, in any way hinder you or embarrass you in the reception of the sworn testimony in this case?

A. No.

Q. Do you have any such prejudice against the colored race?

A. No.

Q. That would prevent you or embarrass you in giving these men a fair and impartial trial?

A. No.

[fol. 410] Q. Certainly as a juror, you will do that, won't you?

A. Yes sir.

Q. What is your name, sir?

A. Ralph Burns.

Q. Where do you live?

A. Bay Lake.

Mr. Hunter: Now, for a moment, I would like a conference with the attorneys for the defense here.

(Discussion out of hearing of the Reporter.)

Q. You say you live at Bay Lake?

A. That's right.

Q. That's where the Padgets live? Were you kin to any of them?

A. Yes sir.

Mr. Hunter: Your Honor, by agreement, not because either one of us want to reflect on Mr. Burns, but he was right there in that community and, by agreement of counsel, we would like for the Court to excuse Mr. Burns.

The Court: Is that the agreement?

Mr. Akerman: Yes sir.

The Court: You are excused.

[fol. 411] MR. ROSS H. BOWEN was called and sworn.

By Mr. Hunter:

Q. Mr. Bowen, where are you from?

A. Clermont.

Q. Mr. Bowen, you heard the statement of that case, did you not?

A. Yes sir.

Q. Have you heard any of the actual facts or circumstances known to be such discussed in this case?

A. No sir.

Q. Have you read articles about it in the newspapers?

A. Yes sir.

The Court: I'll ask you gentlemen of the jury to speak up so that the Court Reporter can hear you and so counsel for defense may hear you.

Q. Would what you heard about this case, what you have read about the case, those things, have they caused you to form or express a fixed opinion in this case before hearing the evidence in the case?

A. No sir.

Q. Do you feel that you could try this case solely on the evidence as given you here by the witnesses?

A. Yes sir.

Q. Do you have any fixed prejudice against the colored race that would in any way embarrass you in the trial of this case or cause you any trouble?

A. No sir.

Q. If you are taken as a juror in this case, would you give both sides a fair and impartial trial on the evidence [fol. 412] and the law?

A. Yes sir.

Q. What is your name, sir?

A. Fergeson.

Q. Where do you live, Mr. Fergeson.

A. Clermont.

Q. I'll ask you the same questions. Have you heard the facts, circumstances, known to be the facts in this case, discussed?

A. I haven't heard the facts. I have read it in the papers.

Q. Read it in the papers?

A. Yes.

Q. Did you form or express any opinion, fixed opinion, from what you read in the newspapers before hearing the evidence in this case?

A. Yes sir.

Q. You have formed and expressed an opinion?

A. I haven't expressed it.

Q. Beg pardon?

A. I haven't expressed it. I have formed one.

Q. Don't tell us what your opinion is. Is that opinion formed from what you read in the newspapers?

A. Yes sir.

Q. And would that opinion which you have formed from what you read in the newspapers, which is only a natural thing for any person to form some kind of an opinion, would that yield readily to the sworn testimony in this case?

A. No sir.

Q. It would not? You think you have already tried these men and convicted them, have you?

A. I wouldn't say that.

[fol. 413] Q. Do you feel like you could give them a fair and impartial trial on the evidence you would hear here?

A. I think so.

Q. Well, do you know so?

A. Yes sir.

Q. It is only a natural thing for an intelligent man to read the newspaper and he usually forms some sort of an opinion about it, doesn't he?

A. Right.

Q. But those opinions, what you see in the newspapers may not be true, may they not?

A. (Indicating by head) Yes.

Q. Now what I want to ask you is, that you read this in the newspapers, you just lay that aside? While we are trying that case and try this case on the evidence you hear from these witnesses?

A. Yes.

Q. You can do that?

A. Yes.

Q. Do you have any prejudice against the colored race?

A. No sir.

Q. That would prevent you from doing that?

A. No.

Q. If taken as a juror could you give both sides a fair and impartial trial?

A. Yes sir.

Q. What is your name, sir?

A. Wineman.

Q. Where do you live?

A. Sorrento.

Q. Have you heard any of the facts and circumstances in this case discussed?

A. Yes sir.

[fol. 414] Q. Have you read it in the newspapers?

A. No sir.

Q. Formed or expressed an opinion from what you read?

A. No sir.

Q. Do you have any prejudice toward the colored race?

A. No sir.

Q. If taken as a juror, would you give both sides a fair and impartial trial?

Q. What is your name?

A. Griffis.

Q. Where do you live?

A. (Answer out of hearing of Reporter.)

Q. Do you know anything about this case?

A. Only what I see in the papers.

Q. Did you form or express an opinion from what you saw in the papers?

A. No. (Indicated by head.)

Q. You have not?

Mr. Akerman: If the Court please, can we ask the jurors to speak up? It's very hard for us to hear. Because it's going to mean repeating the same questions. If we can catch it now, we won't have to be asking the same questions over again.

The Court: Speak out distinctly so the gentlemen can hear you.

Q. Do you have any prejudice against the colored race?

A. No.

Q. Do you think you could give both sides a fair and impartial trial?

A. Yes sir.

Q. What is your name?

A. Postella.

[fol. 415] Q. Where do you live?

A. (Answer out of hearing of the Reporter.)

Q. Have you heard any of the facts in this case discussed?

A. (Indicating by head) No.

Q. Have you read it in the newspapers?

A. Yes sir.

Q. Would what you read preclude you from hearing the testimony in this case and forming a fair and impartial verdict?

A. Not a bit.

Q. If taken as a juror, you would give both sides a fair and impartial trial?

A. That's right.

The Court: Mr. Hunter, you want to ask the jury—

Mr. Hunter: Yes, I'll ask them that question now. Just as well do it.

Q. Are you conscientiously opposed to the infliction of capital punishment in cases where the law authorizes it?

Mr. Green: Am I opposed to it?

Q. Yes.

A. No sir.

Q. How about you?

A. (Hollinger) No sir.

Q. Are you conscientiously opposed to the infliction of capital punishment in cases where the law authorizes it?

A. (Mr. Beasley) No sir. (Mr. Calhoun) No sir.

(All jurors replied in the negative.)

Mr. Hunter: Let the record so show that counsel found they are not opposed to the infliction of capital punishment where the law authorizes.

[fol. 416] By Mr. Akerman:

Q. Mr. Fergeson, you say you live in Clermont?

A. Yes sir.

Q. You say you have heard the case discussed?

A. Yes. And read it in the papers.

Q. Do you recall, not the issue, but what papers? Clermont paper?

A. Clermont paper. Orlando paper.

Q. And, from what you have read, you formed an opinion as to the guilt or innocence of the defendants?

A. Yes.

Q. And you have that opinion, now?

A. Yes sir.

Q. The thing I am trying to get over is, I am not in any of these questions, trying to ask you or in any way infer as to whether it is either an opinion of guilt or innocence. When I ask you these questions, if you will keep that in mind, that that's not what,—we have no right to inquire into that, and I am not attempting to, inquire as to what your opinion is. But I want to inquire about the nature of the opinion. If you get what I mean?

You say you have that opinion at the present time?

A. Yes.

Q. You have served on juries before, have you, Mr. Fergeson?

A. Yes sir.

Q. And, of course, you are familiar with how the trial proceeds, how the evidence comes in in the case. And, you [fol. 417] have heard the facts of the case discussed—I mean you have read newspaper reports purporting to be

the facts in the case and, from that you have formed an opinion?

A. Yes.

Mr. Akerman: The juror is challenged for cause.

By the Court:

Mr. Juror, you say that opinion is fixed in your mind?

A. Yes sir.

Q. And you couldn't go into the jury box with your mind free and open for the purpose of trying this case?

A. No sir.

The Court: Challenge sustained.

Mr. Booy: No objection.

(Whereupon, the juror was excused.)

MR. ERNEST T. B. GREEN, being called, was sworn and entered the box.

By Mr. Hunter:

Q. Mr. Green, where do you live?

A. Mt. Dora.

Q. Are you any kin to this other Green that's on this panel?

A. Not that I know of.

Q. What do you do?

A. Mechanic.

Q. You work in Mt. Dora?

A. Yes sir.

[fol. 418] Q. How long have you been there?

A. 26 years.

Q. You heard the statement of this case, did you not?

A. I have heard it. Yes.

Q. From what I read here in the indictment?

A. I heard that.

Q. And then you heard about the case?

A. Right in the paper. Is all I know.

Q. Have you ever talked to any person that purported to know anything about the facts?

A. No sir.

Q. Mt. Dora is in the north part of the central part of the county?

A. Easterly direction from here.

Q. And this trouble occurred in the far southwest corner of the county?

A. So they say.

Q. You read about it in the newspaper?

A. Yes sir.

Q. From what you have read and heard, did you form or express any fixed opinion about this case?

A. No sir.

Q. Could you try it from the evidence you hear from the witnesses here?

A. Yes sir.

Q. Give both sides a fair and impartial trial?

A. Yes sir.

Q. Do you have any prejudice against the colored race?

A. No sir.

Q. Can you give those colored boys there the same fair and impartial trial you would a white man, here?

A. Yes sir.

[fol. 419] Q. Try their cases on the evidence?

A. Yes sir.

Q. And you would do that if you were taken as a juror?

A. (Indicating by head.) Yes.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: OK. You may inquire.

By Mr. Akerman:

Q. You are Mr. B. B. Green. Is that right?

A. That's right.

Q. I didn't catch where you live.

A. Near Tavares.

Q. Do you know Norma Padget?

A. No sir.

Q. And, so far as you know, you are not kin to Norma Padget by blood or marriage?

A. No sir.

Q. Do you know any of the defendants in the case, three of them?

A. No sir.

Q. Know nothing of them at all?

A. No sir.

Q. Do you know a Howard Crowell?

A. Repeat that, please?

A. Howard Crowell?

A. No sir.

Q. Sam Dotto?

A. No sir.

Q. Harry McDonald?

A. No sir.

Q. Wesley W. Evans?

A. No sir.

[fol. 420] Q. Martha Anderson?

A. No sir.

Q. C. W. Story?

A. No.

Q. Gene Holly?

A. No.

Mr. Hunter: Colored men in the southern end of the County?

A. No sir.

By Mr. Akerman:

Q. Hester Smith?

A. No sir.

Q. Tom Wilson?

A. No sir.

Q. Jeff Daniels?

A. No sir.

Q. Henry Singleton?

A. No sir.

Q. Lt. Angel?

A. No sir.

Mr. Akerman. Is he connected with the highway patrol?
Mr. Hunter; No. I think he's connected with the Gainesville Police Force. Something like that.

Q. Ruby Lee Thomas?

A. No sir.

Q. G. T. Bass?

A. No sir.

Q. I have asked you about Norma Padget. Do you know her husband, Willie Padget?

A. No sir.

Q. C. S. Carroll?

A. No sir.

Q. Curtis Howard?

A. No sir.

Q. James L. Yates? I believe he is the deputy sheriff.
[fol. 421] A. Yes sir.

Q. How long have you known Mr. Yates?

A. Oh, it's been about 2 years, I guess. I have noticed him on the force here. That's all. I know he's a deputy.

Q. You know he is a deputy sheriff?

A. Yes sir.

Q. Mr. Yates, is listed as one of the State witnesses in this case. Of course, at the present time, neither you nor I have any idea of what his testimony is going to be and we can only look in and see. But assuming for example that Mr. Yates testified in this case and one of the defendants or one of the defendants' witnesses testified and their statements were in conflict; in other words, Mr. Yates testified as to certain facts, one of the defendants' witnesses, or even one of the State witnesses, might testify as to something that's in conflict. Now you know Mr. Yates and you know he's a law enforcement officer in Lake County, Florida. Would your knowledge of Mr. Yates and of his official position lead you to give more credence to what Mr. Yates would say than what some other witness that you didn't know, who testified in conflict with the State?

A. It would not.

Mr. Hunter: I think, if your Honor please, that's an unfair question anyway. Trying to get a juror now to state how he would pass on the credibility of witnesses. Now [fol. 422] that's a question that's entirely for the juror to determine, himself, after he hears the testimony. No hypothetical question can be asked not could be answered by the juror.

The Court: What he's getting at, would the fact he is acquainted with him cause him to believe him any quicker than he would the other.

Mr. Hunter: If that's what he intended to say, it was a long way to get around it.

Mr. Akerman: Can I have the question read and see if it is proper?

The Court: Read the question.

(Whereupon, the question was read back by the Reporter.)

The Court: I think that the fact that he knows Mr. Yates could cause him to give greater weight to his testimony would be proper.

Mr. Hunter: I have no objection to the question as propounded by the Court.

By Mr. Akerman:

Q. Do you know Leroy Campbell?

A. I don't think so. No sir.

[fol. 423] Q. Do you know Sgt. Bill Norris of the Highway Patrol?

A. I know the one in Tavares. I don't know his name but I know him when I see him.

Q. Do you know a T. J. Baggs of Madison, Florida?

A. No sir.

Q. Dr. Julian Durant of Madison, Florida?

A. No sir.

Q. James Shepherd, whose brother is one of these defendants?

A. No sir.

Q. Luther Thomas?

A. No sir.

Q. Charlie Staats?

A. No sir. I don't know that name.

Q. How long did you say you have lived in Lake County, Florida?

A. About 25 years.

Q. Do you have a family?

A. Yes sir. Wife and one son.

Q. How old is your son?

A. 30 years old.

Q. Now as you see in this case, the defendants have, as some of their counsel, two negro attorneys. Under the rule of the Court, one of them is a member of the Bar of Florida and another one is not a member of the Bar of Florida but has been admitted for the purpose of this case. These counsel will participate in this case. Do you think that—what effect, if any, would it have on you for a negro counsel to participate in the case and cross examine?

A. Well if it's under the direction of the court, it's OK.
 [fol. 424] Q. And you wouldn't get any more mad with them for vigorously cross examining a witness than you would with white counsel?

A. I don't think so.

Q. The jury has a perfect right to have its feelings toward counsel and the way they conduct themselves in the case. But you, would the fact that they are colored and might be cross examining a white witness, that wouldn't affect you any more than if a white attorney was cross examining them?

A. If it was questions pertaining to the Court and this case, OK.

Q. In other words, as far as you are concerned, it would make no difference whether the attorney was white or colored?

A. No.

Q. And you feel the same way about the defendants? I believe you answered Mr. Hunter to that effect, that you have no prejudice towards the negro race and the mere fact that a negro is charged with crime has no difference with you than if it was a white person charged?

A. No. I can say that I worked with them for years and worked them, and I have had no trouble. Like I stated once before.

Q. Now, you stated that you had read something as to what was alleged to be the facts in the newspapers?

A. Yes. At different times I would read parts in the paper. Especially when it first happened.

Q. Did you form any opinion from what you read in there as to the guilt or innocence of these accused?

A. I have not.

[fol. 425] Q. Now, it may be in the trial of this case that what you read in the newspaper will develop to be the evidence in this case. Or it may well be that the evidence you receive from the witness stand will be entirely foreign to what you read in the newspapers. Or you may have read something in the papers that will not come before you as evidence. Now I am asking you this question. Do you think that you can give, sit on this jury and give the State of Florida on one hand, and the three negro defendants over there on the other hand, the same fair and impartial trial that you would have if you had not heard anything about this case before you came in the courtroom?

A. That's right.

Q. Are you Mr. Hollinger?

A. That's right.

Q. Where did you say you lived?

A. In a little settlement called Paisley, between Umatilla and Deland.

Q. That's over in the eastern end of the county?

A. Yes. Northeast.

Q. Excuse me just a second.—One more question I wanted to ask Mr. Green and I'll be right back to you. You are not represented by Mr. Hunter or any of the State's counsel are you?

A. No sir. I have never needed a lawyer so far.

Q. You are not now represented by Mr. Hunter or any of the State's counsel or any of the defense now, are you, Mr. Hollinger?

A. No sir.

Q. Have you ever been?

A. No sir.

Q. Do you know any of the counsel in this case?

A. I know Mr. Hunter. Yes sir.

[fol. 426] Q. And the fact that you know Mr. Hunter, would that in any way embarrass you in the trial of this case?

A. No sir.

Q. In other words, you could go out and decide between the State of Florida and the defendants and not pay any attention to Mr. Hunter or me or any of the rest of these lawyers up here, couldn't you?

A. Yes sir. I would go by the witnesses.

Q. Do you have a family?

A. Yes sir.

Q. What does your family consist of?

A. Wife and one child and I have a boy there, considered one of the family. He was a homeless boy. We took him in. Just keeping him.

Q. Foster son?

A. Yes sir.

Q. How old is he?

A. 13.

Q. How old is your child?

A. 15.

Q. Boy or girl?

A. Girl.

Q. Now did you read or hear anything purporting or alleged to be the facts in this case?

A. I have read the papers, yes sir. But far as hearing anything, I am out where I don't hear much.

Q. Mr. Hollinger, what papers did you read?

A. Well, I guess the Eustis Lake Region and the Times Union. They are the papers I take.

Q. You take the Eustis Lake Region and the Times Union?

A. Yes sir.

Q. Did you, from what you read in those papers, did you form any opinion as to the guilt or innocence of the defendants in this case?

A. No sir. I have an open mind.

[fol. 427] Q. And you believe that if accepted on this jury you could go into the jury room and be the same fair and impartial juror as if you had never heard of this case before until you came here this morning?

A. That's right.

Q. You heard me explain to Mr. Green about the two of the defense counsel being negroes in the case?

A. Yes sir.

Q. Would that effect you in any way?

A. No sir. I don't think it would.

Q. And you wouldn't get madder at them than you would at any other lawyer for cross examining a witness, what you might consider too vigorously or anything like that?

A. No sir.

Q. Do you feel that it is perfectly all right, lawful and right, that if they are qualified under the law to serve as lawyers, that they can come into this courtroom and act just as any other defense counsel?

A. Yes sir.

Q. Do you know Norma Padget?

A. No sir. Never heard of her.

Q. Down in the Bay Lake area. Then as far as you know, you are not related to her by blood or marriage?

A. No sir.

Q. Do you know any of the defendants, Charlie Greenlee, in the middle, there, Samuel Shepherd and Walter Lee Irvin?

A. Never heard tell of them before.

[fol. 428] Q. Do you know anything about the family of Irvin and Shepherd? Who live down there?

A. No sir. Never heard tell of them.

Q. Do you know Howard Crowell?

A. No sir.

Q. Sam Dotto?

A. No sir.

Q. Harry McDonald?

A. No sir.

Q. Wesley W. Evans?

A. No sir.

Q. Martha Anderson?

A. No sir.

Q. Are you acquainted with any of the negroes down in the Groveland area?

A. Not a one.

Q. Skip those, then. Do you know Curtis Howard?

A. No sir.

Q. I believe he operates a filling station in Leesburg.

A. No sir.

Q. Do you know Mr. Yates, the deputy sheriff?

A. No sir. I don't know him.

Q. Leroy Campbell?

A. Not that I know of.

Q. And, should it develop that in connection with the introduction of the testimony that a witness for either side should be presented, either the State or the defense, that you knew, you wouldn't let any mere knowledge of this person give you any—lend any more credence either in fairness of his testimony or against it, would you?

A. No sir. I would try and be fair minded.

Q. Do you know of any reason why, if accepted on this [fol. 429] jury, that you cannot sit there and calmly and carefully weigh the evidence as given to you by the Judge—I mean by the witnesses and the law given to you by the Judge, and base your decision solely upon that evidence and law?

A. No sir. No reason at all.

Mr. Akerman: Thank you, sir.

Q. Mr. Beasley, you live in Mt. Dora, don't you?

A. Yes sir.

Q. Stated you were a store keeper over in Mt. Dora, did you?

A. Yes sir.

Q. How long have you lived there?

A. Oh, about 20 years, I guess.

Q. Spent most of your life, then, in Lake County, Florida?

A. Yes sir.

Q. Have you heard anything concerning this case?

A. Just in the newspaper. That's all.

Q. You didn't hear it discussed; all you know about it is what you have read in the newspapers; which were alleged to be the facts?

A. Yes sir.

Q. What newspapers did you read?

A. Orlando. Tampa. Mr. Dora Topic.

Q. Orlando Sentinel?

A. Yes sir.

Q. How about the Orlando Star? Do you take that?

A. No sir.

[fol. 430] Q. Mt. Dora Topic?

A. Yes sir.

Q. Tampa Tribune?

A. Yes sir.

Q. You subscribe to all three of those papers and get the daily issues?

A. No sir. I read them.

Q. From what you read, did you form any opinion as to the guilt or innocence of Charles Greenlee, Samuel Shepherd or Walter Irvin?

A. No sir. I haven't.

Q. And you believe that, if accepted on this jury that you can dismiss from your mind anything you have read and base your verdict solely on the evidence as given in the case?

A. I think so.

Q. And if you had read something that didn't come out in the evidence you wouldn't, that wouldn't conscientiously influence you at all?

A. I don't think it would. No sir.

Q. How do you feel about negro attorneys participating in the trial of a case?

A. Well, it's all right.

Q. Think they have got just as much right to be attorneys as anybody; don't feel any stronger about them than you

would any other attorney if they engaged in a vigorous cross examination of the witnesses?

A. No. I don't think I would.

Q. Now, Mr. Beasley, have you ever served on a jury before?

A. No sir.

Q. I believe that the Court will instruct you that merely because a man is charged with a crime and brought to trial therefor is no evidence of guilt. But that, on the other hand, every person is presumed to be innocent and that presumption remains with him throughout the trial unless and until overcome by competent evidence convincing you beyond a reasonable doubt of the defendant's guilt.

Do you think you would have any trouble applying that presumption in this case?

A. Well no. I don't think I would.

Q. In other words, you, if accepted on this jury now, there would then be a presumption which you would follow that Charles Greenlee, Samuel Shepherd and Walter Irvin are innocent of this crime. Is that correct?

A. Well I don't know I could say that, no.

Q. Well, could you explain? I mean I don't know of any way I could reword my question.

A. Well I don't know as I could consider them innocent. Just right now. - I don't know. Right at the present time I guess I should.

Mr. Akerman: Challenge the juror for cause.

The Court: Challenge sustained.

Mr. Hunter. I don't know whether the juror, Your Honor, understands the question.

The Court. He answered it as though he did.

By Mr. Hunter:

Q. Did you understand it?

A. Yes sir.

Q. You understand the law to be that every defendant is presumed to be innocent?

A. Unless he's proven otherwise. Yes sir.

[fol. 432] Q. Now with that in view, could you meet that requirement of the law?

Aq. I guess I could. Yes sir.

Q. Well, do you know whether you could or not?

A. Yes sir.

Q. Will you do that?

A. Yes sir.

Q. You will presume them to be innocent until the State proves beyond a reasonable doubt that they are guilty?

A. Yes sir.

Q. You won't bring that verdict in against them until the State has proved beyond and to the exclusion of every reasonable doubt that they are guilty.

Mr. Hunter: I think, Your Honor, the juror is qualified.
The Court: Let him be excused.

Mr. GEORGE P. LOVELL, was called to the box and sworn.

By Mr. Hunter:

Q. What is your name?

A. G. P. Lovell.

Q. Where do you live; Mr. Lovell?

A. Leesburg.

Q. How long have you lived over there?

A. About 50 years.

Q. You heard the statement of this case, haven't you?

A. Yes sir.

[fol. 433] Q. Do you know anything about the facts or circumstances in connection with it?

A. I do not.

Q. Have you read anything about it?

A. I read it in the papers. I haven't formed any opinion.

Q. Do you have any prejudice against the colored race?

A. I have not.

Q. Will you follow the law if it is given you by the Court that these defendants are presumed to be innocent until proven by competent evidence beyond and to the exclusion of every reasonable doubt that they are guilty?

A. Yes sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Lovell, you said you lived in Leesburg?

A. Right.

Q. About 60 years?

A. About 50. Leesburg. And 12 years in Tampa.

Q. What is your business over there, Mr. Lovell?

A. Accountant.

Q. Do you have a family?

A. Yes sir.

Q. What does your family consist of?

A. Two daughters and a son.

Q. Do you know Norma Padget?

A. I do not.

Q. Do you know the Tyson family down in the south end of the Bay Lake area?

A. No.

[fol. 434] Q. Then insofar as you know, you are not kin to Norma Padget either by blood or marriage?

A. No sir.

Q. Do you know any of the defendants in this case, Charles Greenlee, Samuel Shepherd, or Walter Irvin, seated over there?

A. I do not.

Q. Do you know any of their families down in the Groveland area?

A. No.

Q. Could you hear this list of witnesses I read off asking the other jurors, from where you were seated back there?

A. Yes sir.

Q. Do you know any of these witnesses?

A. No, I do not.

Q. And if it should develop in the trial of this case that some witnesses would be placed on the stand, either for the State or for the defense, you knew of his reputation, that wouldn't have you give either more or less credence to their testimony than any other witness?

A. No. It would not.

Q. As I explained to the other jurors, two of the defense counsel in this case are negro attorneys. Do you feel that you can sit on this jury in which negro attorneys are participating and be no difference between them and any other attorney?

A. No. It would not.

Q. Did you read or hear anything purporting to be the facts of this case?

A. Other than what I have read in the newspapers.

[fol. 435] Q. What newspapers did you read?

A. Orlando Sentinel. Leesburg Commercial.

Q. From what you read, did you form an opinion of the guilt or innocence of the defendants or either of them?

A. I have heard no evidence.

Q. And you feel that you can come into this Court and, if selected on the jury, render a, just the same fair and impartial trial that you would have rendered if you were coming in and never heard anything about it until this morning?

A. Yes.

Q. I believe you stated you were familiar with the rule of law that a man was presumed to be innocent until found guilty.

A. Yes sir.

Q. And I believe the Court will so instruct you in this case. And that the mere charging and bringing a person to trial is no evidence of their guilt, whatsoever, that they come into this Courtroom clothed with the presumption of innocence and that that presumption remains with them throughout this trial unless and until overcome by competent evidence convincing you beyond a reasonable doubt of their innocence. Is that right?—Of their guilt.

A. That's right.

Q. So then, so far as you are concerned, at the present moment, you are willing to adopt a presumption that these three defendants are innocent of this crime?

A. I am.

Q. And you will retain that presumption all the way through unless and until the State gives you, from the witness stand, evidence proving their guilt beyond a reasonable doubt?

A. That's right.

[fol. 436] Q. You have served on juries before, haven't you?

A. Been sometime ago.

Q. Served on criminal juries, haven't you?

A. Yes sir.

Q. And are familiar with the rule that if there is a reasonable doubt as to the guilt of the defendant, either from the evidence as produced or from the lack of evidence, that it is your duty to adopt that reasonable doubt and acquit the defendant?

A. That's right.

Q. And if you are accepted on this jury, will you do that?

A. I will.

Q. If there is any reasonable doubt in your mind at all as to the guilt, either from what evidence has been produced or from the failure to produce certain evidence, you will then vote to acquit the defendants, or the defendant about which you have that reasonable doubt?

A. I will.

Q. And if it is your opinion, after the conclusion of the case that the defendants are innocent or if you have a reasonable doubt as to their guilt, would you remain with that opinion and continue to vote?

A. I would have to be convinced one way or the other.

Q. And would vote for a verdict of not guilty, irrespective of what the other 11 men on the jury?

A. Yes.

Q. In other words, when you bring in the verdict, it is going to be your verdict and not somebody else's verdict?

A. That's right.

[fol. 437] Q. I believe you stated you had no prejudice against members of the colored race?

A. No.

Q. Do you feel that they are citizens under our Constitution just like anybody else?

A. That's right.

Q. That they are entitled to a fair and impartial trial just like any other citizen in the United States of America? You feel that?

A. Yes.

Q. And would require the same amount of evidence before you would convict a member of the colored race that you would require before you convicted a member of the white race?

A. Yes sir.

Q. Now as to the particular crime of rape. Of course every law abiding citizen has strong feelings against any violation, violation of any law. But do you have any—as compared to other crimes, do you have any stronger feeling that would in any way prejudice you because the defendants are charged with rape?

A. (No answer.)

Q. Mr. Dykes, you live over at Umatilla?

A. 6 miles east.

Q. How long have you lived in Lake County, Mr. Dykes?

A. Oh, about 68 years.

Q. You are not represented by Mr. Hunter or the other State's Attorney, are you?

A. No sir.

Q. Never been represented by any of the defense counsel?

A. No.

[fol. 438] Q. Do you know Norma Padget, who lives down in the Bay Lake area?

A. No sir.

Q. Or the Tyson family down there?

A. No.

Q. And, so far as you know, you are not related by blood or marriage?

A. No.

Q. Did you hear me read over the list of State witnesses to the other jurors?

A. Yes sir.

Q. Do you know any of them, Mr. Dykes?

A. Well, I know the deputy sheriff. Just know him and know that he's a deputy sheriff. I am not personally acquainted.

Q. And the fact that you know the deputy Sheriff, would that cause you to give more or less credence to his testimony than it would to any other witness?

A. Would not.

Q. You have served on juries before, haven't you, Mr. Dykes?

A. Yes sir.

Q. Both criminal and civil?

A. Yes sir.

Q. And you are familiar with the rule of law which I believe the Judge will instruct you at the conclusion of this case, that merely because a person is charged with a crime and brought to trial for it is not evidence at all of his guilt of that crime. In fact, the law is to the other effect; that every person is presumed to be innocent and that presumption remains with the defendant throughout the trial until and unless the State proves to you by competent evidence, proved beyond a reasonable doubt, of their guilt, that presumption of innocence remains with them. And, do you feel that if accepted on this jury, that you would

have any trouble applying that presumption of innocence? [fol. 439] In other words, if right now, Charles Greenlee, Samuel Shepberd, and Walter Irvin, the three negroes over there, are presumed to be innocent of this crime, and you have no hesitancy in accepting that presumption?

A. No. No, I wouldn't.

Q. And you would sit and, before you would make any change of your opinion at all, you would wait and see what the evidence of the State was and what evidence the defense brought in?

A. Yes.

Q. And then you would make up your mind as to the guilt or innocence of these defendants?

A. Yes I would.

Q. And you are of course familiar with the rule of law that even though the preponderance of the evidence might point to their guilt, if there was a reasonable doubt in your mind as to their innocence, then under the law, you should give the defendant, or defendants, the benefit of that reasonable doubt and vote to acquit him?

A. Yes.

Q. And you would do that, would you not, Mr. Dykes?

A. Yes sir.

Q. And if, after hearing all the evidence from the witness stand, listening to the Charge of the Court, you are of the opinion that the defendants or one of them or two of the defendants, are innocent, or, if you had a reasonable doubt in your mind as to the guilt of all three of them, or one or two of them, and if you had come to that opinion, would you remain for that opinion regardless of the way the other 11 jurors might feel about it?

A. Yes sir.

[fol. 440] Q. And would stay there right on that opinion as long as you are of that opinion, and when the verdict was returned it would be your verdict?

A. Yes.

Q. That you came to?

A. Yes sir.

Q. You heard me talking to the other jurors concerning the fact that there are two Negro defense counsel in this case. Would the fact that they are members of the negro race in any way affect you in the trial of this case?

A. No.

Q. In the course of the trial, in examination or cross examination of white witnesses, that wouldn't in any way embarrass you or prejudice you in the trial of the case?

A. No.

Q. Mr. Calhoun, are you from Mt. Dora?

A. Yes sir.

Q. How long have you lived down there?

A. 3 years.

Q. Do you have a family, Mr. Calhoun?

A. Yes.

Q. What does your family consist of?

A. Wife and three children.

Q. Girls or boys?

A. Two girls, one boy.

Q. Have you read or heard of anything concerning this case?

A. I have read the papers. Daily.

Q. What papers?

A. Orlando.

Q. You subscribe to that?

A. Yes.

Q. Did you read the daily reports of this case?

A. Yes.

Q. From what you read, did you come to any opinion as to the guilt or innocence of the defendants?

[fol. 441] A. No. I have not come to no fixed opinion.

Q. And from what you have read concerning this case, do you feel that if accepted on the jury that you could give these defendants the same fair and impartial trial just as if you had come into the case this morning and never heard anything further?

A. I think I could.

Q. Well now, Mr. Calhoun, you are the only person that can tell us on that. I mean I know that any juror would make a strong effort to do so. Anybody accepted on the jury will make a strong effort to do so, but you are the only person that knows your own state of feelings about it. So you stated you think you could. Now?

A. I believe you asked me if I thought I could.

Q. You think you could?

A. I, yes, I think I could.

Q. And it would have no effect on you. Do you know Norma Padget, down in the Bay Lake area?

A. I don't know any of the witnesses except possibly the deputy. I think I know him.

Q. And you wouldn't lend any more credence or any less credence to his?

A. No.

Q. You heard me explaining to the other jurors that two of the defense counsel in this case are members of the negro race?

A. Yes.

Q. Would that in any way affect you?

A. Not at all. Be glad to see them do the work.

Q. Do you know of any reason at all why you cannot [fol. 442] serve on this jury and give a fair and impartial trial in the case?

A. None at all.

Q. Mr. Driver, you live at Sorrento?

A. Yes.

Q. Do you have a family, Mr. Driver?

A. Yes sir.

Q. What does that family consist of?

A. Boy and 5 girls.

Q. What is your business, Mr. Driver?

A. Machinist.

Q. There in Sorrento?

A. Pre-cooling Company.

Q. How long have you lived in Lake County?

A. This time, 5 years. 9 years once before.

Q. Are you now represented by Mr. Hunter or any of the other counsel here?

A. No.

Q. Do you know Norma Padget?

A. No, I don't.

Q. Do you know the Tyson family down in the Bay Lake area?

A. No sir.

Q. You heard me read the list of State's witnesses. Do you know any of them?

A. No.

Q. Have you ever served on a jury before?

A. Yes sir.

Q. Criminal?

A. Yes sir.

Q. Then you are familiar with the rule of law I believe

the Judge will instruct you, that merely because a person is charged with crime and brought to trial for it is no evidence of their guilt. On the other hand, the law is to the [fol. 443] contrary. That every person is presumed to be innocent unless and until competent evidence is introduced proving their guilt beyond a reasonable doubt? Would you have any trouble in applying that presumption?

A. Not at all.

Q. And then you feel that, is a presumption?

A. Right.

Q. Right now, that Charles Greenlee, Samuel Shepherd, and Walter Irvin are innocent of this crime?

A. Until I hear the case tried.

Q. That's right. And you have heard no evidence; just the reading of the indictment?

A. No, sir.

Q. You think there is a presumption that they are innocent?

A. That's right.

Q. And of course, you, having served on juries, are familiar with the rule of law that even though the preponderance of the evidence should point to their guilt, if there is any reasonable doubt of their guilt you should resolve that doubt in favor of the defendant or defendants, and vote to acquit them?

A. That's right.

Q. And you would so do in this case?

A. Yes, sir.

Q. And that, after hearing the evidence and being instructed in the law by the Judge, if you were of the opinion that all the defendants, or one or two of them were innocent, and/or there was a reasonable doubt in your mind about [fol. 444] their guilt, you would then vote to acquit them?

A. Yes.

Q. And would so continue to do regardless of the vote or feeling of the other 11 members of the jury?

A. That's right.

Q. In other words when you brought your verdict in in this case, it would be your verdict?

A. That's right.

Q. How do you feel about the two negro defense attorneys in this case?

A. It's all right.

Q. You think they have a perfect right to conduct themselves just as you would expect any other attorney to do?

A. That's right.

Q. And if necessary, to vigorously cross examine a white witness? That they have got just as much right to do that as any other attorney?

A. Yes.

Q. Have you read or heard anything about this case?

A. Read the Orlando paper.

Q. The Orlando paper. Is that the Sentinel?

A. Morning Sentinel.

Q. And the Mt. Dora Topic?

A. Yes.

Q. From what you have read, did you form any opinion as to the guilt or innocence?

A. No, sir.

Q. And you feel that you could serve on this jury and give the defendants the same fair and impartial trial as if you had never read or heard anything about it before? In other words, just come in fresh and heard nothing of it?

A. That's right.

Q. You heard me read over the list of the State witnesses. Do you know any of them?

A. No, sir.

[fol. 445] Q. Mr. Postella?

A. Yes, sir.

Q. You live at Mt. Dora?

A. That's right.

Q. How long have you lived in Lake County, Florida?

A. 29 years.

Q. Are you represented by Mr. Hunter or any of the other counsel here?

A. No.

Q. What is your business, sir?

A. Automobile mechanic.

Q. Do you have a family, sir?

A. Yes, sir.

Q. What does your family consist of?

A. Wife and 3 boys.

Q. Have you read or have you heard anything concerning this case, Mr. Postella?

A. I read more about it than I have heard about it.

Q. Read it in the newspapers?

A. I don't believe half I read in the newspapers nohow.

Q. What newspapers did you read about it?

A. Mt. Dora Topic and Orlando Sentinel.

Q. And I gather from your remarks that what the newspapers had to say about this doesn't affect you in any way at all?

A. Not a bit.

Q. And you could give the defendants the same fair and impartial trial if you had come in here, today, and never heard of the case before?

A. That's right.

Q. How do you feel about the two of the defense counsel being negroes?

A. I am glad to see them trying to make something out of themselves.

[fol. 446] Q. You feel that they have the same right to conduct themselves the same as any other attorney would?

A. That's right.

Q. You have served on juries before, haven't you?

A. Yes, sir.

Q. Criminal juries?

A. Yes, sir.

Q. And of course, you are familiar with the rule of law which, I believe Judge Futch will give you, that merely because a person is charged with crime and brought to trial, that that's no evidence of his guilt?

A. Yes.

Q. On the contrary, that a man is presumed to be innocent and that presumption stays with him throughout the trial until and unless competent evidence is proved beyond a reasonable doubt of his guilt?

A. Yes.

Q. You would have no trouble applying that presumption now?

A. No.

Q. In other words, you feel that that's a presumption at the present time, that Charles Greenlee, Samuel Shepherd, and Walter Irvin are innocent of the crime for which they are charged?

A. Until they are proven guilty.

Q. And that after hearing all the evidence, if you believe after hearing all the evidence and receiving the law from the Court, if you believe that all of the defendants or

one or two of them are innocent or, if you have a reasonable doubt as to their guilt, you would vote to acquit them, would you, sir?

A. After they proved themselves innocent?

Q. I didn't get that last.

A. They would have to prove they're innocent before I'll acquit them.

[fol. 447] Mr. Akerman: Challenge the juror for cause.

The Court: I don't think he got the question. Try him again.

Q. My question was, I think the only thing that we are in any doubt about at all, my question was, if you believe they are innocent, or if you had a reasonable doubt as to their guilt, would you vote to acquit them and, I understand your answer to be that they would have to prove themselves innocent?

A. Well, they are innocent until they are proved guilty.

Q. Then you wouldn't expect any proof on their part of their innocence?

A. No, sir.

Q. You are not going to place any burden on them to do that?

A. That's right.

By Mr. Hunter:

Q. You gentlemen understand that the rule of law is that the State must prove the defendant guilty beyond a reasonable doubt; they don't have to say anything?

Mr. Akerman: I withdraw my challenge to Mr. Postella.

By Mr. Akerman:

Q. Mr. Griffis, where do you live, sir?

A. Leesburg.

Q. How long have you lived in Lake County, Florida, Mr. Griffis?

A. About 8 years.

[fol. 448] Q. Do you know Norma Padget?

A. No, sir.

Q. Know the Tyson family down in the Bay Lake area?

A. I don't know any of them.

Q. How about the list of witnesses I read off?

A. I don't know any of them.

Q. Have you read or heard anything about this case?

A. Just in the papers.

Q. What papers, please sir?

A. *Sentinel* and the *Times Union*.

Q. *Sentinel* and the *Times Union*. From what you read, did you form any opinion of the guilt or innocence of the defendants?

A. No, sir.

Q. And you feel like that you could come into this case and if accepted on the jury, give the same fair and impartial trial that you could have if you had never heard anything before about the facts in this case?

A. Yes, sir.

Q. Do you know either one of the defendants?

A. No, sir.

Q. Do you know their families down there?

A. No, sir.

Q. What is your business, Mr. Griffis?

A. Work for the State Road Department.

Q. State Road Department?

A. Yes, sir.

Mr. Akerman: That's not a disqualification, is it?

The Court: He's an employee.

[fol. 449] Q. Do you have a family, Mr. Griffis?

A. Just my wife and myself.

Q. Have you ever served on a jury before, sir?

A. No, sir.

Q. I believe that Judge Futch will instruct you that merely because a person is charged with a crime and brought to trial that that is no evidence of their guilt of the crime. But that, on the contrary, every person is presumed to be innocent until and unless this presumption is overcome by competent evidence proving their guilt beyond a reasonable doubt. Now with that in mind, do you know, are you now willing to follow the presumption that Charles Greenlee, Samuel Shepherd, and Walter Irvin, are innocent of this crime?

A. Yes.

Q. And that that presumption will remain with you all the way through this trial unless and until it is overcome by competent evidence proving their guilt beyond a reasonable doubt?

A. Yes, sir.

Q. And if, at the conclusion of all the evidence, you are either convinced of their innocence or you have doubt as to their guilt, of all three or one or two of them, you will then vote to acquit those about which you have the reasonable doubt as to their guilt?

A. Yes, sir.

Q. And that, having reached that conclusion, based upon either the evidence presented or the failure of the State to prove certain things, that if you are convinced of their innocence or have a reasonable doubt as to their guilt, you will remain of that opinion and vote for acquittal regardless of how the other 11 men on the jury may stand?

[fol. 450] A. Yes, sir.

Q. And if accepted on this jury, the verdict brought out is going to be your verdict. Is that correct?

A. Yes, sir.

Q. How do you feel about two negroes serving as defense counsel in this case?

A. It's all right.

Q. And you feel that if they are the defense counsel in this case, that they must discharge their duty?

A. Yes.

Q. And if it was necessary to vigorously cross examine white witnesses, you think they have got just as much right to do that as any white lawyer?

A. Yes, sir.

Q. Mr. Wineman, you live at Sorrento?

A. That's right.

Q. How long have you lived down there, sir?

A. 6 years.

Q. Do you know Norma Padget?

A. No, sir.

Q. Do you know the Tyson family down in the Bay Lake area?

A. I don't know anybody down that way.

Q. You don't know anybody down that way?

A. That's right.

Q. Well, most of these witnesses, I believe are from down there. You heard me read the list of witnesses?

A. Yes, sir.

Q. Do you know any of those?

A. No, sir.

Q. And if it should develop in this case that some witnesses, either for the State or for the defendant, or any one one of them turned out to be somebody you knew, you wouldn't give any more or less credence to what they said?

A. No, sir.

Q. How do you feel about two of the defense attorneys being negro attorneys?

A. It's all right by me.

[fol. 451] Q. And you think that if they are going to serve in this case, that they will have to do their duty and that even in the vigorous cross examinations of white witnesses, and you will judge them by the same standard you would white counsel?

A. That's right.

Q. Have you heard or read anything pertaining to this case purported to be the facts?

A. I am like Mr. Postella, that I read in the papers, I don't believe only a third, maybe.

Q. And you didn't make any opinion on it?

A. That's right.

Q. Do you feel, Mr. Wineman, that you could come in here and disregard whatever you read and listen to what comes from the witness stand and the instructions given you by the Court?

A. That's right.

Q. Have you ever served on juries before, sir?

A. Yes sir.

Q. You heard my questions to the other members of the jury concerning the fact it is my opinion, and I believe Judge Fitch will so instruct you, that merely because a person is charged with crime and brought to trial is no evidence of his guilt. The fact is, the law is to the contrary. That there is a presumption of innocence and that presumption remains with the defendant throughout the trial unless and until overcome by evidence proving to you beyond a reasonable doubt of his guilt.

A. Yes sir.

[fol. 452] Q. I believe that to be the law and I believe that's what the Court will instruct you as to the law.

Then you feel now, then, that there is a presumption that Charles Greenlee, Samuel Shepherd, and Walter Irvin, those three sitting there, are innocent of this crime?

A. Until proven guilty.

Q. That's right. And that if, at the conclusion of the evidence, the law given to you by the Court, you feel of the opinion that they are innocent, or, one or two of them are innocent, or, you have a reasonable doubt as to their guilt, then when you retire to the jury room, your verdict will be not guilty? Your vote will be not guilty. Is that correct?

A. Yes.

Q. And you will abide by that conviction and vote for not guilty, regardless of what the other 11 members, how they stand?

A. Yes.

Q. That any verdict brought out of that jury box, if you are serving on it, is going to be your verdict?

A. That's right.

Q. You are Mr. Ernest B. Green?

A. That's right.

Q. Are you from Mt. Dora, Mr. Green?

A. That's right.

Q. What is your business down there?

A. Mechanic.

Q. Do you have a family?

A. Yes sir.

Q. What does your family consist of, sir?

A. Daughter and stepdaughter.

[fol. 453] Q. How long have you lived down at Mt. Dora?

A. 26 years.

Q. Do you know Norma Padget?

A. No. I don't know anybody on that list except the sheriff. Mr. Yates.

Q. You know Mr. Yates, do you?

A. Yes.

Q. How well do you know Mr. Yates?

A. Well, pretty good.

Q. Well, would your knowledge of Mr. Yates lead you to give either more or less credence to any testimony he might give than some witness you don't know?

A. Not any.

Q. And if he testified one way and another witness, another, you would judge their demeanor and try to decide which one was telling the truth and your past knowledge of Mr. Yates wouldn't enter into it at all?

A. No.

Q. Have you read or heard anything about this case?

A. I read the papers.

Q. Which papers?

A. Times Union. Tampa. And the Topic.

Q. From what you read, did you form any opinion as to the guilt or innocence of these defendants?

A. No sir.

Q. And do you feel that if accepted on this jury, that you could come into the courtroom and give the same type of fair and impartial trial that you would as if you had never read anything about it or heard anything about it?

A. Yes sir.

Q. Have you ever served on a jury before, sir?

A. Yes. 3 or 4 times.

[fol. 454] Q. Criminal?

A. Yes sir.

Q. Well then, you are familiar, or have heard the judge instruct you that merely because a person is charged with a crime and brought to trial, that's no evidence of their guilt in the case? There is a presumption of innocence and that presumption remains with them until overcome by competent evidence?

A. That's right.

Q. And you have no trouble applying that rule of law?

A. No.

Q. Then you feel at the present moment, that Charles Greenlee, Samuel Shepherd and Walter Irven, three defendants over here, are presumed to be innocent of the crime for which they are charged?

A. That's right.

Q. And that you will follow that presumption and keep it and have it remain with you until it is overcome by competent evidence?

A. That's right.

Q. And if at the conclusion of the evidence, and after the instructions by the Court, if you are of the opinion that the defendants, or any one or two of them, are innocent, or if you have a reasonable doubt in your mind as to their guilt, then your vote will be not guilty. Is that correct?

A. Yes sir.

Q. And that you will, having arrived at that opinion,

stand by it, regardless of how the other 11 members of the jury may see fit to vote?

A. Yes, sir.

[fol. 455] Q. So that any verdict that comes out of the jury room in this case, if you are serving on the jury, will be your verdict?

A. That's right.

Q. How do you feel——

The Court: Mr. Akerman, are you finished with that juror?

Mr. Akerman: I'll try to finish with him in a couple questions.

Q. How do you feel about two negro defense counsel in this case?

A. It's all right.

Q. And you think they have a right to conduct themselves just like any white attorney?

A. That's right.

Q. And if they had to vigorously cross examine some white witness, you feel toward them just like you would if it was white counsel?

A. That's right, sir.

Mr. Akerman: No further questions.

The Court: Gentlemen of the jury and members of the bar, the hour of 12 has arrived and eating facilities are none too good here in Tavares. It will be necessary to take a little extra time, I expect. You don't expect the jury to be kept together until they are sworn, do you?

Mr. Akerman: No sir.

[fol. 456] The Court: We will recess then, until 1:15. We will expect you gentlemen to be back in the jury box at 1:15; the rest of the jury to be in the courtroom at that time.

(Whereupon, the Court stood at recess until 1:15 PM, at which time, the following proceedings were had:.)

By Mr. Akerman:

Mr. Mostella, you saw Mr. Hunter and I out in the hall and you wanted to make an addition?

A. I am an automobile mechanic by trade but at the present, I am running a liquor store.

Q. All right, sir. Thank you.

Q. Mr. Bolen, you live down at Clermont?

A. Yes sir.

Q. How long have you lived down there?

A. 20 years.

Q. Do you know Sam Dotto?

A. Yes sir.

Q. Any kin to you?

A. Yes sir.

Q. What kin?

A. Brother-in-law.

Q. Do you know Mary McDonald?

A. No sir.

Q. Do you—did you hear me read the list of State's witnesses?

A. Yes sir.

Q. Do you know any of them besides Dotto?

A. I know this James Shepherd.

Q. You know James Shepherd?

A. Yes sir.

[fol. 457] Q. Brother of one of the defendants, here?

A. Yes sir.

Q. Do you know Willie Padget?

A. No sir.

Q. Do you know Norma Padget?

A. No sir.

Q. Do you know the Tyson family over in the Bay Lake area?

A. No.

Q. What is your business down there in Clermont?

A. Assistant Accountant, Orange State Oil Company.

Q. Do you have a family?

A. Wife.

Q. No children?

A. No.

Q. Have you read anything in the newspapers or heard this case discussed?

A. I have read the newspapers.

Q. Did you ever hear it discussed?

A. Street. Just street talk.

Q. Did you discuss it any with Sam Dotto?

A. Yes sir. I have.

Q. From what you have heard or—excuse me just a sec—

ond. Did you say whether you read anything in the newspapers about it?

A. I have. Yes sir.

Q. What newspapers, please?

A. Tampa Tribune.

Q. From what you have heard or discussed, have you formed any opinion in this case?

A. No sir. I haven't.

[fol. 458] Q. And do you think, if accepted on this jury, you could make the same fair and impartial juror and give a fair and impartial trial just as though you walked in here this morning and never heard anything from the beginning about the case?

A. Yes sir.

Q. Have you served on juries before?

A. No sir.

Q. You have heard me talking with the other jurors about presumption in law, of the innocence of a person charged with crime. The mere fact that they are charged with crime and brought in to stand trial is no evidence of their guilt but the law is, in fact, contrary; the law being that every person is presumed to be innocent of a crime and that presumption remains with them throughout the trial unless and until it is overcome by competent evidence proving their guilt beyond any reasonable doubt. Do you think you could apply that presumption in this case?

A. I believe they are innocent till they are proved guilty.

Q. Then you feel right now that Charles Greenlee and Samuel Shepherd and Walter Irvin, there is a presumption of their innocence in this case?

A. Until they prove to me that they are guilty.

Q. And if, after you hear all the evidence in this case, you are instructed as to the law from Judge Futch, it is your belief that the defendants, or any one of them are innocent, or, there is a reasonable doubt in your mind as to their guilt, then you would vote for a verdict of not [fol. 459] guilty?

A. Yes sir.

Q. And if, having so arrived at that conclusion, that your verdict should be not guilty, you would maintain and abide by that conclusion regardless of whatever vote any of the other 11 men on this jury?

A. That's right.

Q. Did you get over into Groveland immediately following this crime?

A. Well, 4 or 5 days afterwards, yes sir, I delivered gas to one of our stations there.

Q. But you weren't over there right immediately following?

A. No.

Q. And the only ones of the parties that you know anything about is Samuel Shepherd—James Shepherd, the brother of Samuel Shepherd?

A. No.

Q. You don't know Irven or his family down there?

A. No.

Q. How do you feel about these, two of the defense counsel being negroes?

A. That's all right.

Q. And that, if, in the course of the trial, they should have to vigorously cross examine white witnesses, you wouldn't have—in other words, it would make no difference to you if they were colored. You would have the same feelings you would have toward a white attorney doing that?

A. That's right.

Q. Now, you say you are a brother-in-law of Sam Dotto?

A. Yes sir.

[fol. 460] Q. If he should testify in this case, as a witness, the fact of your family relationship, would it cause you to lend any more or less credence to Dotto's testimony?

A. No sir.

Q. You wouldn't feel a bit embarrassed if your verdict was contrary to what he said?

A. No sir.

Q. Are you Mr. Crowell?

A. That's right.

Q. Do you live at Umatilla, sir?

A. I live halfway between Umatilla and Eustis.

Q. What is your business?

A. Carpenter.

Q. How long have you lived in Lake County, Florida?

A. I was born in Lake County, but I have lived here, this time, 6 years. Prior to that, I was in Michigan.

Q. Do you have a family, sir?

A. Wife.

Q. No children?

A. No.

Q. You have heard me read off this list of witnesses. Do you know any of them?

A. Only the deputy sheriff. I know him when I see him. I have been introduced to him but I have never talked to him much.

Q. Well, the fact that you have a casual acquaintance with the deputy sheriff, that wouldn't embarrass you in any way in the trial of this case if he might be a witness in it would it, Mr. Crowell?

[fol. 461] A. No sir.

Q. You don't know the Padget's?

A. No. I don't know any of them.

Q. Or the Tyson family, down in the Bay Lake area?

A. No.

Q. Have you heard or read anything about this case?

A. Well, I didn't read. My eyes are bad. I heard it discussed. Heard it on the radio.

Q. From what you heard, did you form any—come to any opinion as to the guilt or innocence of the defendants?

A. No. The only ones I heard discussed, I didn't form any opinion. They wasn't under oath.

Q. And you feel that you can come into the courtroom now and serve as a juror and be just as fair and impartial as if you had never heard anything concerning the case?

A. I do.

Q. Have you ever served on a jury before, sir?

A. No sir.

Q. You heard my discussion with the other members of the jury concerning the law, that the mere fact that a person is charged with a crime and brought to trial is no evidence of their guilt but, on the contrary, the law presumes every person to be innocent of crime and that presumption remains with the defendant throughout the trial until it is overcome by competent evidence proving that guilt beyond a reasonable doubt. With that in mind do you now feel that the presumption that Charles Greenlee, Samuel Shepherd, and Walter Irvin, the three defendants seated over [fol. 462] there, are innocent of the crime?

A. Yes sir.

Q. And you also heard me questioning the other jurors to the effect that if at the conclusion of all the evidence in the case, either from the evidence that has been introduced or for the lack of evidence, there is a reasonable doubt in

your mind as to the guilt or innocence of the defendants, then it is your duty to resolve that doubt in favor of the person accused of crime and vote to acquit him. Do you think you could do that, sir?

A. I do.

Q. And would you do that, sir?

A. I will.

Q. And that, if, after having heard all the evidence in the case, received your instructions from the Court, retire to the jury room, either you are of the opinion that one or all of the defendants, were innocent, or there was a reasonable doubt in your mind as to the guilt of them, you would then vote to acquit them?

A. I would.

Q. And, having arrived at that opinion from the law and the evidence, would you abide by that opinion and consistently vote that way?

A. I would.

Q. And regardless of how the other 11 members of the jury serving with you might feel?

A. Yes sir.

Q. And that any verdict brought out, would be your verdict?

A. I could do that.

[fol. 463] Q. How do you feel about negro attorneys serving as defense counsel in this case?

A. If he didn't have a right there, they wouldn't be there.

Q. And, being here, you think they should fulfill their duty and you would judge them according to the same standards you would judge white attorneys?

A. That's right.

Mr. Akerman: What says the State?

By Mr. Hunter:

Q. One thing I want to state. One question I want to ask. Is Mr. Dotto here?

A. No sir. He is in Pennsylvania.

Q. He is not in this State?

A. Not as I know of.

Mr. Hunter: I want to state that we failed to get service to Mr. Dotto. He lives in the State of Pennsylvania.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes?

A. No sir.

Q. Are you, Mr. Crowell?

A. No sir.

Q. Any other member of this jury opposed to capital punishment in those cases where the law authorizes it? If you are, just hold up your hands.

(There were none indicated.)

Mr. Hunter: State will excuse Mr. Edward A. Wineman and Mr. Bernard Griffis.

{fol. 464] Mr. THOMAS E. CALDWELL, sworn, entered the box, also Mr. EDMUNDS LITTLETON.

By Mr. Hunter:

Q. Mr. Caldwell, where are you from?

A. Umatilla.

Q. How long have you lived there?

A. 29 years.

Q. What business are you in?

A. Umatilla Fruit Company.

Q. You have heard, this morning, the statement of what this cause is, have you not?

A. Yes sir. I have.

Q. Have you heard the facts in this case discussed by people who purported to know what the actual facts are?

A. I have not.

Q. Have you read about them in the newspapers?

A. I have.

Q. From your reading of the newspapers, have you formed or expressed any fixed opinion as to the guilt of these particular defendants?

A. Well, we all form an opinion. We cannot rely upon what you read in print. I go from the evidence, the testimony from the witness stand.

Q. Then you could try this case from the evidence adduced before you with sworn witnesses just as easily as you could, and render a fair verdict, just as easily as you could if you had never read the newspapers?

A. I can. Yes sir.

Q. Do you have any prejudice against the colored race that would prevent you from doing that?

A. None, whatever.

[fol. 465] Q. Do you feel that you would be a fair and impartial juror in this case?

A. I do.

Q. Mr. Littleton, where are you from?

A. Leesburg.

Q. How long have you been there, Mr. Littleton?

A. It's Littleton Edmunds.

Q. How long have you been there?

A. 27 years.

Q. Your name is Edmunds. Not Edmunds Littleton?

A. Yes sir. The reverse.

Q. Say you have been there 27 years?

A. Yes sir.

Q. Do you know anything about this case?

A. No sir. No more than what I have read.

Q. Have you formed or expressed any opinion about it?

A. No sir.

Q. Do you have any prejudice against colored people?

A. No sir.

Q. Can you give them both, both sides a fair and impartial trial?

A. Yes sir.

Q. Both of you gentlemen, have either of you any conscientious scruples against the infliction of capital punishment in those cases where the law provides?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Caldwell, you say you have read about this occurrence in the papers?

A. Yes sir. I have.

Q. What papers did you read, sir?

A. Orlando morning Sentinel.

Q. And you say naturally that—

A. Naturally, we do form an opinion.

Q. From what you read in the paper?

A. That's right.

Q. And what's the nature of that opinion? I think maybe

I had better explain, before you go ahead, I'm not trying to ask you whether it is for guilty or innocence.

A. Well——

Mr. Hunter: You don't have to express any opinion.

Q. That's what I say. Any of my questions are not directed to that. I am not trying to ascertain that fact. But I mean now, with that view in mind——

A. As I stated to Col. Hunter, we all form some kind of opinion. We know that. But naturally, I go from the testimony from the stand before I come to my final conclusion.

Q. And you feel that if accepted on this jury, you could make the same fair and impartial juror that you could have if you had never heard anything about this case?

A. I could.

Q. What business are you in, sir?

A. With the Umatilla Fruit Company. Foreman.

Q. And do you have a family, sir?

A. I have.

Q. What does your family consist of?

A. Wife and one son.

[fol. 467] Q. Are you acquainted with any of the witnesses I read out or, could you hear me from where you were?

A. I don't know any of them.

Q. You are not acquainted with the Tyson family down in the Bay Lake area?

A. No. I don't know them.

Q. You know nothing of the family of Irvin and Shepherd, over here?

A. No sir.

Q. Your business is up at the other end of the county?

A. Up at the other end of the county. Yes sir.

Q. You have served on juries before, haven't you?

A. Yes sir.

Q. Criminal juries as well as civil?

A. Yes sir.

Q. And you received instructions from the Court as to the law in the case?

A. Yes sir.

Q. And you are familiar with the principle of law that merely because the person is indicted, brought into Court

to stand trial for a crime, that's no evidence of that person's guilt?

A. That's right.

Q. And in fact, the law is to the contrary. That every person is presumed to be innocent and that presumption remains with them unless and until their guilt is established by evidence beyond a reasonable doubt?

A. Yes sir.

Q. Then you feel at the present time the presumption that those three defendants seated over there, Charles Greenlee and Samuel Shepherd and Walter Irvin, are innocent of this crime?

A. That's right.

[fol. 468] Q. And after hearing all the evidence and receiving your instructions as to the law from Judge Futch, then if you believe that all three of the defendants or one or two of them are innocent, or, if there's a reasonable doubt in your mind as to the guilt of them, then you will vote for a verdict of not guilty. Is that right, sir?

A. That's right.

Q. And, having arrived at that opinion from the evidence and the law, that will be your opinion and you will abide by it?

A. That's right.

Q. And if there is a reasonable doubt, regardless of how the other 11 gentlemen here, may feel about the case?

A. Yes sir.

Q. Any verdict that comes out of that jury room, if you are serving on it, it's going to be your verdict, isn't it?

A. That's right.

Q. How do you feel about the fact that two of the defense attorneys are negroes?

A. All right.

Q. And if they are serving as attorneys in this case they have as much right to cross examine and conduct themselves and you will judge them by the same standard of activities and conduct that you would judge the rest of the white lawyers in this case?

A. That's right. I would.

Q. Now, Mr. Hunter is not your attorney at the present time?

A. No sir.

[fol. 469] Q. Never been represented by him?

A. No sir.

Q. Do you know of any reason, Mr. Caldwell, why, if accepted on this jury, you cannot give a fair and impartial trial in the case?

A. I do not.

Q. Is that Mr. Edwards or Edmunds?

A. Edmunds.

Q. You live in Leesburg?

A. Yes sir.

Q. What is your business?

A. Farm.

Q. Do you have a family?

A. Yes sir.

Q. What does it consist of?

A. Wife and daughter.

Q. Did you hear me read the list of State's witnesses from where you were seated back there?

A. Yes sir.

Q. Do you know any of them, Mr. Edmunds?

A. Two.

Q. Which ones are those?

A. Curtis Howard, I know him. But I haven't talked to him on any subject and I also know Mr. Campbell.

Q. You know Mr. Howard. He is the filling station man?

A. Well, he works there at times.

Q. You haven't discussed the case with him?

A. No. I haven't.

Q. Who was the other witness?

A. The Deputy Sheriff. Mr. Campbell. I haven't talked to him, either.

Q. And your acquaintanceship with those witnesses would be such as to either give more or less credence to any testimony they gave over what some stranger might say?

A. It wouldn't bother me in the least.

[fol. 470] Q. Have you read or heard anything concerning the facts?

A. Yes, I have read. I was not here at the time the case was taken.

Q. You were out of the State?

A. I was at Daytona Beach.

Q. You have read some of the newspapers?

A. Yes sir.

Q. What newspapers did you read, sir?

A. Daytona Beach paper. I saw it first in, and then in the Tampa Tribune.

Q. From what you read, did you form any opinion as to the guilt or innocence of these defendants?

A. No sir.

Q. And do you feel that you could now serve on this jury and be the same fair, give the same fair, impartial trial just as if you had never heard anything about this case?

A. I could.

Q. You have served on juries before, sir, haven't you?

A. Yes sir.

Q. Criminal juries?

A. Yes sir.

Q. And then, you are familiar with the instructions that are given to you by the Court that merely because a person is indicted and brought to trial, that there is no evidence of their guilt?

A. That's right.

Q. And in fact, on the contrary, they are presumed to be innocent?

A. That's right.

[fol. 471] Q. And that presumption remains with them until the evidence proving their guilt beyond a reasonable doubt is introduced?

A. Yes sir.

Q. Then with that in mind, do you feel at the present moment that there is a presumption that Charles Greenlee, Samuel Shepherd and Walter Irvin, are innocent of this crime?

A. Yes sir.

Q. And that you will maintain that presumption all the way through this case unless and until the State proves their guilt beyond a reasonable doubt?

A. Yes sir.

Q. And if, at the conclusion of all the evidence in the case and you have received your instructions as a juror from the Court, you are of the opinion that, from the evidence that's been produced or from the lack of evidence in the case, that one or more of the defendants are innocent, or that there is a reasonable doubt as to their guilt, then you will vote for a verdict of not guilty?

A. Yes sir.

Q. Is that correct, sir?

A. Yes sir.

Q. And, having come to that conclusion, after having heard the evidence, it is your opinion that they are innocent or, that there is evidence of their guilt, you will abide by that opinion?

A. Yes.

Q. Regardless of how your other fellow-jurors may vote or feel about the matter?

A. Yes.

[fol. 472] Q. And that if you serve on this jury, any verdict that comes out of the jury room will be the verdict that you conscientiously subscribe to?

A. Yes.

Q. Do you know of any reason why, if selected on this jury, you cannot serve and give a fair and impartial trial?

A. I don't.

Mr. Akerman: What says the State?

Mr. Hunter: The State tenders the jury.

Mr. Akerman: The Defendant, Charles Greenlee, will excuse Mr. Dykes.

Mr. O. L. DRAWDY was sworn, and entered the jury box.

By Mr. Hunter:

Q. Mr. Drawdy where do you live?

A. Fruitland Park, in Leesburg.

Q. How long have you lived in this county?

A. About 6 years.

Q. What is your business?

A. Citrus.

Q. Have you heard the facts or circumstances in this case discussed?

A. Just what I have read about it is all.

Q. Have you formed or expressed any opinion as to the guilt of these particular defendants from what you read?

A. No sir.

[fol. 473] Q. Do you have any prejudice against the colored people that would in any way hamper you in the trial of this case?

A. No sir.

Q. If taken as a juror, would you give both sides a fair and impartial trial?

A. Yes sir.

Q. Are you opposed to capital punishment in those cases where the law authorizes it?

A. Yes sir.

Q. You are?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. You say you live out on the Fruitland Park, Mr. Drawdy?

A. That's right.

Q. What is your business, please, sir?

A. In the citrus business.

Q. Do you know Norma Padget?

A. No sir.

Q. Or her husband, Willie Padget?

A. No sir.

Q. Are you acquainted with the Tyson family down in the Bay Lake area?

A. No.

Q. Do you know any of the defendants in this case, Charles Greenlee, Samuel Shepherd and Walter Irvin?

A. No sir.

Q. Do you know the family of the defendant, Greenlee, — I mean, Shepherd, or Irvin?

A. No sir.

Q. Did you hear the list of witnesses I read off back there?

A. Yes sir.

[fol. 474] Q. Do you know any of them?

A. The Deputy Sheriff is about the only one I personally know.

Q. He is the deputy sheriff?

A. That's right.

Q. How long have you known Mr. Campbell?

A. Ever since he's been a deputy.

Q. What is the nature of your acquaintanceship with him?

A. Just know him when I see him, mostly.

Q. Would the fact that you are acquainted with Mr. Campbell cause you to give either more or less credence to his testimony than any other testimony?

A. Not a bit.

Q. No more or less than any other witness?

A. That's right.

Q. How do you feel about two of the defense counsel being negroes?

A. It's all right with me.

Q. Would you judge them by the same standards of conduct that you would judge white counsel?

A. That's right.

Q. And think it is perfectly all right for them to cross examine white witnesses?

A. Yes sir.

Q. You are familiar with the rule of law that every person that's presumed to — innocent until proven guilty?

A. That's right.

Q. The mere fact that an indictment has been returned against them when they are brought into Court to stand trial is no evidence of their guilt?

A. That's right.

[fols. 475-479] Q. And this presumption of innocence remains with them all the way through until it is overcome by evidence, proved beyond a reasonable doubt?

A. That's right.

Q. Then, do you presume Charles Greenlee, Samuel Shepherd, and Walter Irvin to be innocent of this crime at the present time?

A. Unless it is proved difference.

Q. Do you know of any reason why, if accepted in this jury, you cannot serve as a fair and impartial juror, return a fair and impartial verdict in this case?

A. No.

Mr. Akerman: What says the State?

Mr. Hunter: State tenders the jury.

Mr. Akerman: The defendant, Charles Greenlee, will excuse Mr. Cathoun.

[fol. 480] Mr. CHARLES BLAZE, was sworn and entered the jury box.

By Mr. Hunter:

Q. What is your name, please?

A. Blaze.

Q. Where do you live, Mr. Blaze?

A. Fruitland Park.

Q. How long have you lived there?

A. 30 years.

Q. What is your business?

A. Work at carpentry work.

Q. Have you ever heard anything about this case?

A. No.

Q. Did you read about it?

A. I looked at the headlines. That's all.

Q. From what you have heard and read, did you form any opinion as to the guilt or innocence of these defendants?

A. None, whatsoever.

Q. Just don't know anything about the case?

A. Not much.

Q. If you were taken as a juror, would you give both sides a fair and impartial trial from the testimony you would hear in the courtroom?

A. Yes sir.

Q. Have you any prejudice against the colored race?

A. No sir.

Mr. Hunter: You may inquire.

Q. Do you have any conscientious scruples against the infliction of capital punishment?

A. No.

[fol. 481] By Mr. Akerman:

Q. Did you hear me read the list of these people to the other jurors?

A. Yes sir.

Q. Do you know any of them?

A. No.

Q. Do you have a family, sir?

A. No.

Q. Did you know any of that list that I read?

A. No.

Q. You are not acquainted with the Tyson family down in the Ray Lake area?

A. No.

Q. Have you served on juries before?

A. Yes.

Q. Criminal cases?

A. Yes.

Q. And of course, you have received the general instructions of the law from the Judge at the conclusion of the case?

A. Yes.

Q. And then you are aware of the rule of law that it is the law of this country and of our State, that merely because a person is indicted and brought into Court to stand trial is no evidence of their guilt?

A. Yes.

Q. Are you familiar with that rule?

A. Yes.

Q. And have followed it in other cases?

A. Yes.

Q. And will follow it in this case?

A. Yes.

Q. And also that they are presumed to be innocent and that presumption remains with them throughout the trial unless and until the State has overcome that presumption by evidence of the proof of their guilt beyond a reasonable doubt?

A. Yes.

[fol. 482] Q. Then you feel that there is a presumption at the present time that Charles Greenlee, Samuel Shepherd and Walter Irvin, the three defendants seated along there are innocent of this crime?

A. Until they are proved otherwise.

Q. Well of course at this state of the proceedings there has been no evidence in the case, so you feel there is a presumption now that they are innocent?

A. Well, until they are proved otherwise.

Q. And you are also familiar with the rule of law that's the law of this country, that every person charged with a crime has to be proven guilty beyond a reasonable doubt and if there is a reasonable doubt in your mind arising either from the evidence that's been introduced or from the lack of evidence you should resolve that doubt in favor of the defendant?

A. Yes.

Q. So if accepted on the jury in this case, after hearing the evidence and the law given to you by Judge Futch, you retire to consider the case, if there is a reasonable doubt in your mind as to the guilt of these defendants, will you vote for a verdict of not guilty?

A. Yes.

Q. And, having arrived at that opinion from the law and from the evidence, will you abide by that opinion regardless of what opinion the other 11 members of the jury may have?

A. I will.

Q. Any verdict that comes out of the jury room, if you serve on this jury, will be your verdict?

A. Yes.

[fol. 483] Q. Will be your opinion?

A. Yes.

Q. And not the opinion of someone else?

A. Right.

Q. How do you feel about two of the defense lawyers being negroes? Think that's proper?

A. I don't quite understand that.

Q. Two of the defense counsel here are negroes. How do you feel about that?

A. Go to it.

Q. And do you think that they have the right in this case to participate in the cross-examination of white witnesses?

A. Sure.

Q. And you would judge them by the same standard of conduct that you would judge a white lawyer?

A. Nothing there.

Q. What is the answer?

A. Give it to me again and I'll catch it better.

Q. I say that since two of the defense counsel are negroes, do you feel then that they have the right in this case to cross-examine the witnesses vigorously?

A. Yes.

Q. And that you would judge them by the same standards of conduct that you would judge the white lawyers?

A. Have to in that case.

Q. Would you have any trouble doing that?

A. No. I don't think so.

Q. Mr. Blaze, are you nor or have you ever been represented by Mr. Hunter, the State's Attorney here?

A. No. I don't have no occasion for it.

[fol. 484] Mr. Akerman: No further questions.

By Mr. Hunter:

Q. Where are you from? What is your native State?

A. I was born in Indiana.

Mr. Hunter: We tender the jury again.

Mr. Akerman: Defendant, Charles Greenlee, will excuse Mr. Drawdy.

MR. ARTHUR POLK, was sworn and entered the jury box.

By Mr. Hunter:

Q. Mr. Polk, where do you live?

A. I live in Eustis.

Q. How long have you lived there?

A. 12 years.

Q. Have you heard any of the facts and circumstances in connection with this case discussed?

A. No sir.

Q. Read about it in the newspapers?

A. Yes sir.

Q. Did you form or express any fixed opinion on the guilt or innocence of these defendants from what you read in the papers?

A. No sir.

Q. Have you any prejudice against the colored race that would keep you from giving them a fair trial?

A. I do not.

Q. Are you opposed to capital punishment?

A. No sir.

Q. If taken as a juror, you will give both sides a fair and impartial trial?

A. Yes sir.

[fol. 485] Mr. Hunter: Tender the jury.

By Mr. Akerman:

Q. Where did you say you lived, Mr. Polk?

A. Eustis.

Q. How long have you lived in Lake County, Mr. Polk?

A. 27 years.

Q. Are you acquainted down in the Groveland area?

A. I know a few people.

Q. What is your business?

A. Automobile dealer and gasoline business.

Q. And do you know Mr. and Mrs. Willie Padgett from down there?

A. No sir.

Q. Do you know the Tyson family down in the Bay Lake area?

A. No sir.

Q. Do you know any of these defendants, here?

A. I do not.

Q. Know any of their families?

A. No sir.

Q. Did you say you had read something in the newspaper about this case?

A. I have.

Q. What newspapers did you read?

A. I was out of the State at the time of this. I went to Carolina. And I don't recall the name of the papers.

Q. Wasn't any of the local papers, here?

A. I did, when I got back here.

[fol. 486] Q. From what you read, did you form any opinion as to the guilt or innocence?

A. No sir.

Q. And, do you feel that you could serve on this jury and be just as fair and impartial a juror now, that you would have been had you not heard anything about the facts in this case?

A. No sir.

Q. Do you have a family, Mr. Polk?

A. Yes sir.

Q. What does your family consist of?

A. Wife, son, and two daughters.

Q. Have you ever served on a jury before?

A. Yes sir.

Q. Criminal cases?

A. Yes sir.

Q. Then you have heard the Court instruct the jury on the law?

A. I have.

Q. And are familiar with the rule of law that says before a verdict of conviction there must be proof beyond a reasonable doubt; if there is any reasonable doubt in your mind, that you should resolve it in favor of the defendant?

A. That's right.

Q. And, if accepted on this jury, would you resolve any reasonable doubt in favor of the defendants, Charles Greenlee, Samuel Shepherd, and Walter Irvin?

A. I would.

Q. And you are also familiar that merely because a person is indicted and charged with crime, that that's no evidence of their guilt?

A. That's right.

Q. Fact, that it is the law that every person is presumed to be innocent and that presumption remains with them throughout the trial unless and until overcome by evidence [fol. 487] proving their guilt beyond a reasonable doubt?

A. That's right, sir.

Q. Then you feel, then, that there is a presumption at this present moment, that Charles Greenlee, Samuel Shepherd and Walter Irvin, are innocent of this crime?

A. I do. Until proven otherwise.

Q. How do you feel about the fact that two of the defense counsel in this case are members of the negro race?

A. If they were approved by the Court, they are OK by me.

Q. And you would feel that serving as attorneys in this case, that they would have the right to vigorously cross-examine white witnesses?

A. That's right.

Q. Even if it is necessary to cross-examine a white lady in this case?

A. Sure.

Q. And you would judge them by the same standards of conduct that you would judge white attorneys?

A. I would.

Q. Do you know of any reason why, if accepted on this jury, you cannot serve and give a fair and impartial trial in this case?

A. I do not.

Mr. Akerman: What says the State?

Mr. Hunter: I'll ask the Court to recess for 5 minutes.

The Court: The Court will take a 10 minutes recess.

(At the end of the recess, the Court reopened and the following proceedings were had:)

[fol. 488] Mr. Akerman: What says the State?

Mr. Hunter: We tender.

Mr. Akerman: The Defendant, Charles Greenlee, will excuse Mr. Caldwell.

Mr. J. G. RAY, JR., sworn, entered the jury box.

By Mr. Hunter:

Q. Mr. Ray, where do you live?

A. Mt. Dora.

Q. How long have you lived there?

A. 29 years.

Q. You have heard the statements of this case?

A. Yes sir.

Q. Do you know anything about it?

A. Nothing definite.

Q. Did you ever hear the facts or circumstances in connection with it discussed?

A. Just what I read in the papers.

Q. Did you form or express any opinion from what you read in the papers?

A. Yes sir.

Q. Definite?

A. It could be changed.

Q. Could you disregard what you read in the papers and try these men on the sworn testimony here?

A. If I were selected on the jury, I would certainly try to disregard it.

[fol. 489] Q. You think you could?

A. Why, I don't know. I think I could.

Q. Well, there's not anybody else that knows but you? You wouldn't try a man on a capital offense on what you read in the newspapers, about him, would you?

A. No sir.

Q. Would you listen to the evidence and try him on that?

A. Yes. I would listen to the evidence.

Q. Could you disregard what you read in the newspapers and try him on the evidence, alone?

A. I don't know that I could forget all I read in the newspapers, but I would certainly try to be fair about it.

Q. Could you disregard what you read in the newspapers and try him on the evidence, alone?

A. Yes.

Q. Would you do that?

A. Yes.

Q. Do you have any prejudice against the colored people?

A. No. That is, none that would affect this trial.

Q. You can give them the same fair and impartial trial

that you could anybody else, white man or anyone else, couldn't you?

A. That's right.

Q. And would try this case solely upon the evidence you hear from the witness box and what the Court tells you is the law?

A. Yes.

Q. Would you have any difficulty about it?

A. Well I don't believe I will.

[fol. 490] Q. Well, you are the one to answer. Would you?

A. Well I don't see how I could tell that until after I experienced it. I don't think I would.

Q. Do you know whether you can give them a fair trial on the evidence you hear here just the same as if you had never read anything about it?

A. I would certainly do my best to give him a fair trial.

Q. Well, could you do it?

A. This is my first experience. I don't know whether I could or not.

Q. You would just do the best you could?

A. Yes sir.

Mr. Hunter: I expect you would make a better juror then, than some old professional. You may inquire.

By Mr. Akerman:

Q. Mr. Ray, you live at Mt. Dora?

A. Yes sir.

Q. What is your business, Mr. Ray?

A. Building.

Q. Do you have a family?

A. Yes sir.

Q. What does your family consist of, please sir?

A. I have a wife and three sons, two daughters. And all the other relatives.

Q. Mr. Ray, you say you read of this case?

A. Yes sir.

Q. What papers did you read, sir?

A. I read the Topic and the Sentinel. Reporter Star, and the Tribune and the Miami Herald.

[fol. 491] Q. Did you talk to anybody about the case?

A. Yes sir.

Q. Quite a number of people?

A. Yes sir.

Q. You say you formed an opinion on it?

A. Yes sir.

Q. Have you ever expressed that opinion to anybody?

A. Yes sir.

Mr. Akerman: Challenge the juror for cause, if the Court please. He formed and expressed an opinion.

Mr. Hunter: Well, that's not the rule.

The Court: I think he's evidenced a sufficient lack of understanding and ability. The challenge should be sustained.

Mr. J. J. HUNT, sworn, entered the jury box.

By Mr. Hunter:

Q. Mr. Hunt, where are you from?

A. Down in the south end of the county.

Q. What place?

A. Down close to the Withlacoochee River.

Q. What precinct?

A. I guess it's the 44th district.

[fol. 492] Q. What district is that?

A. That's the Groveland District.

Mr. Hunter: Under our stipulation, Your Honor, Mr. Hunt will be excused.

The Court: All right, Mr. Hunt.

Mr. RAY ROBBINS, sworn, entered the jury box.

By Mr. Hunter:

Q. Mr. Robbins, what precinct are you from?

A. I live northwest of Mascotte.

Q. In the Mascotte precinct?

A. Yes sir.

Mr. Hunter: Mr. Robbins comes under the same stipulation, Your Honor.

The Court: All right, Mr. Robbins.

Mr. J. E. HYATT, sworn, entered the jury box.

By Mr. Hunter:

Q. Mr. Hyatt, you are from Mascotte, too, aren't you?

A. Yes sir.

Mr. Hunter: Nothing against you, but we have a stipulation here not to call any jurors from Mascotte.

The Court: Is that agreed to, Mr. Akerman?

[fol. 493] Mr. Akerman: Yes sir.

Mr. C. B. HULL, sworn, entered the jury box.

By Mr. Hunter:

Q. Mr. Hull, where do you live?

A. Clermont.

Q. You have heard about this case, haven't you?

A. Very little.

Q. Read about it in the newspapers?

A. Started to read it and I throwed it down and I didn't want to read it.

Q. Wasn't interested in it?

A. No, not particularly.

Q. Now have you talked to anybody that purported to know the facts about it?

A. No, I haven't discussed it with anyone.

Q. Your mind is perfectly free and open then, to try this case from the evidence you would hear here in the jury box?

A. Absolutely.

Q. Do you have any prejudice against a colored man?

A. No prejudice against any man, living or dead.

Q. If taken as a juror, would you give both sides a fair and impartial trial?

A. I'll do my best.

Q. Are you conscientiously opposed to capital punishment?

A. Not where the law so provides.

Mr. Hunter: OK. You may inquire.

[fol. 494] By Mr. Akerman:

Q. What is your business, Mr. Hull?

A. Farming at the present time.

Q. Do you have a family, Mr. Hull?

A. 8 children. 4 boys and 4 girls.

Q. How long have you lived in Lake County, sir?

A. A little over 60 years.

Q. Spent most of that time down in the Clermont section?

A. Yes. Most of the time. Yes.

Q. Are you acquainted down in the Groveland section?

A. I am acquainted some. But I am not acquainted with these people.

Q. Now do you know anybody down in the Bay Lake area?

A. No. I am acquainted with the business people down in Groveland. Those that run stores and things like that.

Q. So you don't know Norma Padget or her husband, Willie Padget?

A. No. I couldn't pick them out here in the courtroom.

Q. Tyson family?

A. No sir.

Q. And you don't know anything about this case or the negroes here?

A. I never saw them before until today.

Q. You do not know anything about the families of Shepherd or Irvin?

A. No.

Q. I believe you stated that you just started to read it and threw it aside. So you haven't formed any opinion in this case. Have you?

A. I just figured I would be called on the jury and I wouldn't read it.

[fol. 495] Q. You have served on juries before, I guess, in Lake County?

A. Yes.

Q. Criminal juries?

A. Yes sir.

Q. You know, of course, then, the rule of law that any reasonable doubt should be resolved in favor of the defendant?

A. Yes.

Q. You would do that in this case, wouldn't you?

A. Absolutely.

Q. Also the presumption that they are innocent?

A. As far as I know, they are not guilty.

Q. And you feel that way right now, that Charles Green-

lee and Samuel Shepherd and Walter Irvin are not guilty; you are going to wait and see what the evidence brings forth?

A. Absolutely.

Q. And you are not going to make up your mind until you have heard all the evidence and the law as given to you by Judge Futch?

A. Yes sir.

Q. And if you feel that they are not guilty or there is a reasonable doubt of their guilt, you are going to vote not guilty?

A. That's right.

Q. And, having made your opinion from the law and the evidence, that's going to be your opinion?

A. Absolutely.

Q. And, regardless of the feeling of the other 11 men?

A. Yes. I don't pay no attention to them, at all.

[fol. 496] Mr. Akerman: What says the State?

Mr. Hunter: State tenders.

Mr. Akerman: Defendant, Charles Greenlee will excuse Mr. Driver, Mr. Crowe, Mr. Postella and Mr. Hollinger.

GEORGE H. RAST, RALPH G. BISHOP and A. M. CHASE, JOSEPH E. DIXON, were sworn and took their places in the jury box.

By Mr. Hunter:

Q. What is your name, sir?

A. A. M. Chase.

Q. Where are you from?

A. Lady Lake.

Q. Mr. Dixon, where are you from?

A. Groveland.

Mr. Hunter: All right. Mr. Dixon comes in our stipulation.

(Whereupon, the juror was excused.)

Mr. WILLIAM E. NEWTON, was sworn and took his seat in the jury box.

By Mr. Hunter:

Q. Now this gentlemen, here, what did you say your name was?

A. A. M. Chase.

Q. Where do you live, Mr. Chase?

A. Conine Switch, Lake County.

[fol. 497] Q. How long have you been there?

A. 3 years.

Q. Where are you from?

A. Dallas, Texas.

Q. What is your business?

A. Retired.

Q. Have you heard anything about this case?

A. Very little.

Q. Talked with any persons who purported to know the facts in the case?

A. No sir.

Q. Have you read anything about it in the papers?

A. Very little.

Q. What you have read, have you formed and expressed any opinion about the case?

A. No sir.

Q. Do you have any prejudice against the colored race that would prevent you from giving these people a fair trial?

A. None, whatsoever.

Q. Do you know of any reason why you couldn't sit as a fair juror in this case?

A. None, whatever.

Q. Now, somebody gave me a list of the ones that were called.—Are you conscientiously opposed to the infliction of capital punishment?

A. No sir.

Q. Now, Mr. Newton, where do you live?

A. Astatulla.

Q. Do you know anything about this case?

A. No sir.

Q. Are you prejudiced against the colored race in any degree that would cause you to hesitate to form a righteous [fol. 498] verdict in this case?

A. No sir.

Q. Do you know any reason why you couldn't sit as a fair and impartial juror?

A. No sir. I don't.

Q. Now I believe, Mr. Rast is another one here. Where are you from?

A. Leesburg.

Q. Do you know anything about this case?

A. I don't know any of the facts.

Q. You read about it in the newspapers, I presume?

A. Very little. I was out of the State at the time.

Q. You were out of the State. Then you have not formed or expressed any opinion as to the guilt or innocence of these defendants?

A. No.

Q. Do you have any prejudice against the colored race that would in any way hinder you or keep you from rendering a fair and impartial verdict in this case?

A. No sir.

Q. If taken as a juror in this case, would you give both sides a fair and impartial trial?

A. Yes.

Q. Are you opposed to capital punishment in cases where the law authorizes it?

A. No sir.

Q. Are you, Mr. Newton?

A. No sir.

Q. Now, wasn't there someone else called up?—What is your name?

A. Bishop.

Q. Where are you from, Mr. Bishop?

A. Mineola.

Q. Do you know anything about this case?

A. No sir.

[fol. 499] Q. Have you ever heard anything about it?

A. No sir. I was out of the State at that time.

Q. Where are you from originally?

A. Auburn, Indiana.

Q. You say your name is Bishop?

A. Bishop.

Q. And you are from Mineola?

A. Yes sir.

Q. Have you formed or expressed any opinion in relation to this case?

A. No sir.

Q. And you haven't discussed the facts with anyone?

A. That's right.

Q. I believe you said you were not opposed to capital punishment?

A. That's right.

Q. Do you have any prejudice against the colored race?

A. No sir.

Q. If you are taken as a juror in this case, will you give both sides a fair and impartial trial?

A. Yes sir.

Q. You say you are from Mineola?

A. Mineola.

Q. What do you do down there?

A. I am a citrus grower.

Q. Got any grapefruit?

A. Very little.

Q. Where are they; on the ground?

A. On the ground.

Mr. Hunter: You may inquire.

[fol. 500]

By Mr. Akerman:

Q. You stated that you were out of the state at the time of the occurrence, so you heard or read very little concerning this?

A. I didn't. Any of the papers.

Q. You discussed it since you have been home?

A. Just casually.

Q. From your discussions have you formed or expressed any opinion on it?

A. No. I don't know that I have.

Q. Do you feel like you can come in here and give just the same fair, impartial trial that you could if you hadn't even heard any discussion about it?

A. Yes.

Q. And you will, if selected on this jury, give a fair and impartial trial?

A. Yes.

Q. How long have you lived in Lake County, Mr. Rast?

A. About 35 years.

Q. Do you have a family here?

A. Yes.

Q. What does it consist of, please, sir?

A. Wife, stepdaughter and son.

Q. You served on juries before, Mr. Rast?

A. No sir.

Q. Well, in connection with jury service, in courtroom trials, you probably know the evidence comes from the witness. Then, the judge, Judge Futch, will instruct you as to the law in the case. And I believe Judge Futch will instruct you that the law is that the mere filing of an indictment [fol. 501] and bringing to trial of a defendant or defendants, is no evidence of their guilt; that merely because they are charged with crime doesn't indicate their guilt in an evidentiary way. The law being, on the other hand, that every person is presumed to be innocent of crime and that presumption remains with a person charged with crime throughout the trial unless and until it is overcome by evidence of proof of their guilt beyond a reasonable doubt.

Do you think you would have any trouble applying that presumption in this case?

A. No.

Q. Then you feel at the present time there is a presumption that Charles Greening, Samuel Shepherd, and Walter Irvin, the three defendants seated right over there, are innocent of this crime?

A. Yes.

Q. The Court will instruct you that if, after hearing the evidence there is a doubt, a reasonable doubt, in your mind, as to the guilt, that it is your duty to resolve any doubt in favor of the defendants and to return a verdict of not guilty. Do you think you would have any trouble doing that in this case?

A. No.

Q. Then if, after hearing all the evidence in the case, from the witness, and being instructed by the Court on the law by Judge Futch, when you retire to consider the case, if, from what evidence has been introduced, or, from the lack of any evidence, you feel that the defendants, or any one of them, are innocent, or, that there is a reasonable doubt as to their guilty, then you will vote for a verdict [fol. 502] of not guilty. Is that correct, sir?

A. I will.

Q. And, having reached that opinion, from the evidence given that you have heard and the law given to you by the

Court, will you abide by that opinion, regardless of the feeling of, what may be the feeling, of the other 11 members of the jury?

A. Yes.

Q. So that any verdict, if you are serving on this jury, that comes out of the jury room, will be your verdict?

A. That's right.

Q. Are you acquainted with any of the witnesses that we have read the list of here?

A. Mr. Campbell and—(out of hearing of the Reporter.)

Q. Would that acquaintanceship embarrass you in this trial?

A. No sir.

Q. And you could just as easily give as much credence to the testimony of any other witness?

A. That's right.

Q. Mr. Rast, two of the defense counsel in this case are negro attorneys, and they are participating in this trial. Will that, in any way affect you?

A. No.

Q. And you would feel that it would be proper for them, as defense counsel, to cross examine witnesses, even though the witness happened to be white?

A. That's right.

Q. And you would judge them by the same standard of conduct in this trial that you would judge the other white attorneys?

A. Yes.

[fol. 563] Q. Mr. Bishop, you say you didn't hear much about this case, too, didn't you?

A. Just little articles in the paper while I was gone. Cleveland Plain Dealer, and an article in the local paper where I was.

Q. And, from what you read, you didn't even form an opinion, did you, sir?

A. I was quite a ways away. I didn't know what it was all about. Just a little item about like that. (Indicating with fingers.)

Q. And you feel that if selected as a member of the jury in this case, you can give just as fair and impartial trial as if you had never heard anything about it?

A. Yes sir.

Q. Do you know any of the witnesses?

A. None that I know of, no.

Q. You don't know anything about the Tyson family down in the Bay Lake area?

A. No.

Q. Do you have a family?

A. Yes sir.

Q. What does it consist of?

A. Wife, daughter and son.

Q. Have you ever served on a jury, sir?

A. Never in the South. I have on the North. I served in civil cases. Lawsuits and things like that.

Q. Well in the case of a criminal offense, you will recall that the evidence comes from the witness stand and the Court instructs you as to what the law is. And you probably are familiar with the rule of law that, merely because [fol. 504] the person is arrested, charged with a crime, indictment filed against them, and they are brought into Court for trial, that that's no evidence of their guilt?

A. That's right.

Q. And you subscribe to that principle, don't you, sir?

A. Yes sir.

Q. And in fact, they are presumed to be innocent and that presumption stays with them until the evidence is brought into the trial proving their guilt beyond a reasonable doubt. Do you subscribe to that?

A. Yes sir.

Q. And then you feel, at the present time, that the defendants, Charles Greenlee, and Samuel Shepherd and Walter Irvin, are presumed to be innocent, do you not?

A. That's right.

Q. And you will give them the benefit of that presumption and have it remain with them throughout the trial and will not convict them unless and until the State brings in evidence convincing you beyond a reasonable doubt?

A. Yes sir.

Q. And the Court will instruct you that if there is any reasonable doubt in your mind as to the guilt or innocence you should resolve that doubt in favor of the defendants. You think you would have any trouble doing that, sir?

A. No sir.

Q. And if, at the conclusion of all the evidence, the instructions by the Court, it is your belief that the defendants or any one of them are innocent, or if you have a

reasonable doubt as to their guilt, you will then vote for a verdict of not guilty. Is that correct?

A. That's right, sir.

[fol. 505] Q. And, having come to that conclusion after hearing the evidence and the law, that will be your opinion and shall remain your opinion, won't it, sir?

A. That's right.

Q. And regardless of what might be the opinion of the other 11 members or, whether they are one way or whether they are with you or, of another opinion?

A. That's right.

Q. And if accepted on this jury, any verdict that comes out of that jury room will be your verdict, will be your conscientious belief in the matter, will it not?

A. That's right.

Q. How do you feel about the fact that there are negro attorneys appearing in the case? A. Will that affect you in any way?

A. No.

Q. And you will judge them by the same standards of conduct that you would judge the other white attorneys, both for the State and the defense in the case?

A. That's right.

Q. Mr. Newton, where did you say you were from?

A. Astatulla.

Q. How long have you lived in Lake County?

A. 45 years.

Q. What is your business?

A. Carpentry.

[fol. 506] Q. Did you hear me read off the list of State's witnesses in this case?

A. Yes, sir. I did.

Q. Do you know any of them, sir?

A. I know the deputy sheriff, Yates.

Q. What is the nature of your acquaintanceship with him?

A. I just met him, is all.

Q. Then it wouldn't embarrass you any to sit in this case where he is going to be a witness? You wouldn't give any more credence or any less credence to what he said than someone you didn't know?

A. No, sir. I wouldn't.

Q. Have you read or heard anything concerning this case, sir?

A. No, sir. I don't pay no attention to the papers at all.

Q. You served on a jury before, haven't you?

A. No, sir.

Q. If the Court instructs you that the mere arrest and bringing a person to trial, charging them with crime is no evidence of their guilt. Will you subscribe to that principle?

A. No, sir.

Q. Did you understand my question there?

A. No. I didn't exactly understand you.

Q. Well, if the Court instructs you that merely because these defendants have been arrested and charged with a crime and brought into this courtroom for trial, that that is no evidence of their guilt. That, of itself, is no evidence of their guilt?

A. No.

[fol. 507] Q. And will you agree with the Court on that?

A. Sure.

Q. And if he says that they are presumed to be innocent, that the presumption is that they are innocent of this crime, and that that presumption remains with them throughout this trial until the State introduces evidence proving their guilt beyond a reasonable doubt, will you apply that presumption to them?

A. Yes sir.

Q. Then at the present time, you believe that the three defendants over there are presumed to be innocent right at the present time?

A. That's right.

Q. And will wait and see what evidence the State puts in?

A. That's right.

Q. And unless evidence is introduced proving their guilt beyond a reasonable doubt, you will then vote for a verdict of not guilty. Is that correct, sir?

A. That's right.

Q. How do you feel about the appearance of colored attorneys representing these defendants? Do you think that's all right?

A. Yes sir.

Q. Could you judge them by the same standard of conduct that you are going to judge the rest of the attorneys, Mr. Hunter, myself, and Mr. Buoy?

A. Yes sir.

Q. Do you know of any reason why, if accepted on this jury, you couldn't serve and give a fair and impartial trial?

A. No sir, I don't.

[fol. 508] (Discussion at the Bench out of hearing of the Reporter.)

By Mr. Akerman:

Q. Mr. Chase, you live out at Lady Lake, sir?

A. Yes sir.

Q. You said you hadn't heard anything about this case, didn't you?

A. Very, very little.

Q. What you heard, you didn't form any opinion, did you?

A. No.

Q. And you think that you can come into this case and try just like you had never heard anything about it before. Is that right, sir?

A. Yes sir.

Q. Do you know any of these witnesses I called out, most of them living down in the south end of the county?

A. Not a one of them.

Q. Do you know anything about these three defendants over there, or their families?

A. Never seen them or heard of them before except the little I've seen in the papers.

Q. You have served on juries before, haven't you?

A. Yes sir.

Q. And you are familiar with the fact that the Court instructs you as to the law?

A. That's right.

Q. And you are familiar with the instructions about reasonable doubt?

A. Yes, sir.

Q. In other words, before you are going to convict anybody, you have got to be convinced by evidence beyond a reasonable doubt?

A. Yes.

[fol. 509] Q. If there is any reasonable doubt in your mind, at all, you are going to vote for a verdict of not guilty. Is that correct, sir?

A. That's right.

Q. And you are also familiar with the law that merely because a person is charged with crime and brought to trial that that doesn't constitute evidence or is no indication of his guilt?

A. That's right.

Q. They come in here presumed to be innocent?

A. Yes sir.

Q. And then you feel that Charles Greenlee, Camuel Shepherd, and Walter Irvin, over there, are presumed to be innocent, right now?

A. Absolutely.

Q. You are going to sit and wait and see what the evidence comes in on them?

A. Yes.

Q. And if, at the conclusion of the evidence, and after the Court has instructed you as to the law and you retire to consider your verdict, you feel, your opinion from what evidence you have heard, and the law given to you by the Court, that the 3 of them are innocent, or any of the three, or that there is a reasonable doubt as to their guilt, you are going to vote for a verdict of not guilty, aren't you?

A. That's right.

Q. And, having come to that opinion, you are going to abide by it?

A. That's right.

Q. And regardless of what, how the other 11 members of the jury feel about it?

A. That's right.

[fol. 510] Q. Would the fact that colored counsel appear, colored attorneys are appearing in this case, as part of the defense counsel, in any way affect you in this case?

A. Not whatsoever.

Q. And, if, in the discharge of their duties as attorneys for the defendants, they have to cross examine witnesses, white witnesses, you will judge them by the same standard of conduct that you will judge the white attorneys?

A. Yes sir.

Mr. Akerman: What says the State.

Mr. Hunter: Tender.

Mr. Akerman: The defendant, Charles Greenlee, excuses Mr. Bowen, and Mr. Polk.

Mr. GILBERT HARTWRIGHT, Mr. SIMON H. BAIR, were sworn and took their seats in the jury box.

By Mr. Hunter:

Q. Where are you from, Mr. Bair?

A. 6 miles north and east of Leesburg.

Q. Did you ever live over towards Aster?

A. No sir.

Q. You spell your name different from those over there?

A. Yes.

Q. Are you in the Leesburg precinct?

A. Fruitland Park.

[fol. 511] Q. Your name is spelled B-a-i-r?

A. B-a-i-r.

Q. How long have you been there Mr. Bair?

A. 5 years.

Q. Where are you from?

A. Ohio.

Q. What is your business?

A. Retired.

Q. Do you know anything about this case?

A. Only what I have read.

Q. Form or express any opinion in reference to the case?

A. Not definitely.

Q. Don't want you to tell what your opinion is, but you do have some opinion?

A. No. I don't have any opinion at all only what I have read in the papers. Naturally, you form an opinion.

Q. Do you think you would have any difficulty in laying that opinion aside and trying this case on the evidence that you hear?

A. No.

Q. Do you have any prejudice against colored people?

A. Not a bit.

Q. You are from Umatilla, aren't you, Mr. Hartwright?

A. Yes sir.

Q. Have you heard anything about this case?

A. No. Haven't talked to anyone. Just heard about it.

Q. Read it in the newspapers?

A. Yes.

Q. Have you any prejudice against the colored people?

A. Not a bit.

Q. Think you could give both sides a fair and impartial [fol. 512] trial?

A. Yes sir. Impartial trial.

Q. How long have you been in Umatilla, Mr. Hartwright?

A. About 30 years.

Q. Mr. Hartwright, do you have any conscientious scruples against the infliction of capital punishment?

A. No sir.

Q. Do you know Mr. Bair?

A. No sir.

Mr. Hunter: OK. Now you can inquire.

By Mr. Akerman:

Q. Mr. Bair, where was it you said you lived, sir?

A. Fruitland Park district.

Q. You say you had read or heard something about this case?

A. I have read about it. Yes sir.

Q. In the papers. What papers, Mr. Bair?

A. Leesburg Commercial.

Q. Naturally, you did form some opinion when you read it?

A. Oh, yes sir.

Q. The nature of that opinion fixed or not?

A. No sir.

Q. Do you think that, having read concerning the case, formed an opinion, that if, in the trial of the case, that you would have any trouble distinguishing between what you might have read in the newspapers and what came out on the evidence, here?

A. What came out on the evidence.

Q. Suppose that the evidence didn't introduce some of the things that were in the newspapers; Would you have any trouble erasing those from your mind and going ahead, considering those things said in the paper as never been proved?

[fol. 513] A. Sort of a question.

Q. I mean, you have read certain things in the newspapers. We'll assume in this trial that those things are not proved in the evidence. No mention is made of them. Now when you get ready to consider your verdict, do you think you can erase from your mind those things that you read in the papers and just feel like that you never heard of them and no evidence of them being introduced here and no effect on your verdict in any matter?

A. I would try not to have anything affect my verdict.

Q. I know, sir; but can you erase what you have heard from your mind?

A. No. I can't erase whatever I hear from my mind.

Q. In other words, that's going to be back there?

A. It will be there. And I think that's true with all of us. That's going to remain a memory there.

Q. Now my point is just this. What I am trying to arrive at is, certain things have been stated in the newspapers and it is my opinion that they will not be brought out and proven in this trial. You see what I mean?

A. Yes.

Q. So that then, after you retire to consider the case, are you going to be able to keep those things that you heard but that were not introduced in the trial from in any manner influencing your verdict?

A. I think so.

Q. You will make every effort to do so?

A. Yes.

Q. And you feel that you can be just as fair and impartial a juror as if you had never heard anything concerning the case?

A. Yes sir.

[fol. 514] Q. Did you state you are retired, Mr. Bair?

A. I am.

Q. Do you have a family, sir?

A. Yes sir.

Q. What does it consist of?

A. A son and daughter.

Q. I believe you stated in answer to the question by Mr. Hunter, that you had no prejudice against the members of the colored race?

A. That's right.

Q. How do you feel about the fact that two of the defense counsel in this case are members of the colored race?

A. I have never heard of that before.

Q. And you feel that if they are defense counsel they should participate in the case just like the white counsel do?

A. Yes.

Q. And you would judge them by the same standards of conduct that you are going to judge Mr. Baoy, Mr. Hunter, and myself?

A. As long as their conduct is the same.

Q. And if they start cross examining a witness, even

though it is a white person, you wouldn't feel that they should hold up on the cross examination; that they should go right ahead like any other lawyer should do and wouldn't start blaming them any quicker than you would start blaming us?

A. That's right.

Q. Mr. Hartwright, you live in Umatilla, sir?

A. Yes sir.

Q. Your business?

A. Carpentry.

[fol. 515] Q. You say you lived there for how long?

A. About 30 years.

Q. Do you have a family?

A. Wife and one boy.

Q. Do you know any of these witnesses I read the list of?

A. No sir.

Q. Do you read or did you hear anything concerning this case?

A. I read it in the papers, but I haven't formed an opinion.

Q. What papers did you read?

A. Orlando papers.

Q. You read it in the papers, but didn't form an opinion?

A. That's right.

Q. And you felt that if accepted on this jury, that you can dismiss what you have heard about it, start off just like you had never heard anything and take the evidence as it comes from the stand and the law given you by the Court?

A. That's right.

Q. Did you ever serve on a jury before, sir?

A. Yes sir.

Q. Here, in a criminal case?

A. No sir.

Q. Never served on a criminal?

A. No sir.

Q. You heard my discussion with the other jurors concerning the rules of evidence, that the mere fact that Charles Greenlee, Samuel Shepherd and Walter Irvin, the three defendants seated over there, were arrested, charged with this crime, indicted for it and brought here to stand [fol. 516] trial, is no evidence, whatsoever, of their guilt?

A. That's right.

Q. And you subscribe to that and you will so believe?

A. Yes.

Q. In fact, the fact is that they are presumed to be innocent until the State has introduced evidence proving their guilt beyond a reasonable doubt?

A. That's right.

Q. So that at the present moment, you agree that there is a presumption that they are innocent of this crime?

A. Yes sir.

Q. And you will sit there, if accepted on this jury, and wait and see what evidence the State puts in?

A. That's right.

Q. And if, at the conclusion of all the evidence, you feel that one or two or all of them are innocent, or even though you may feel they might be guilty, if there is a reasonable doubt in your mind, will you then vote for a verdict of not guilty?

A. Yes.

Q. After having arrived at that opinion of not guilty, will you abide by that opinion irrespective of what may be the opinion of the other 11 jurors?

A. I will.

Q. Any verdict that's arrived at will be your verdict; will be the result of your conscientious opinion in this case?

A. Yes sir.

Mr. Akerman: The Defendant, Samuel Shepherd, will excuse Mr. Chase and Mr. Newton.

[fol. 517a] Mr. JAMES C. BARR, Mr. O'NEAL C. BURKS, sworn, took their seats in the jury box.

By Mr. Hunter:

Q. Mr. Barr, where do you live?

A. Clermont, Florida.

Q. How long have you been down there?

A. 37 years, I think. I came there in 1912.

Q. What is your business?

A. Carpenter by trade.

Q. Do you know anything about this case?

A. No. I have heard a lot of stuff.

Q. Stuff you heard and read in the newspapers, did you form or express any opinion about the guilt or innocence of these defendants?

A. No, I haven't. I go by the evidence.

Q. Go by the evidence, strictly?

A. Exactly.

Q. Do you have any prejudice against colored people?

A. No sir. I love the negro and feel the same toward him as anybody else.

Q. Do you feel, Mr. Barr, that you could give these defendants a fair and impartial trial in this case?

A. I could.

Q. And you will do it, too, won't you?

A. I will.

[fol. 518] Q. What is your name?

A. O'Neal C. Burks.

Q. Where do you live, Mr. Burks?

A. Tavares.

Q. How long have you been living in Tavares?

A. 12 years.

Q. Do you know anything about this case?

A. No sir.

Q. Have you any prejudice against the colored race?

A. No sir.

Q. If taken on this jury, in this case, can you give both sides a fair and impartial trial?

A. I can.

Mr. Hunter: You may inquire.—

Q. Both of them, I think I know, though, do you have any conscientious scruples against the infliction of capital punishment?

A. I am in favor of capital punishment.

Q. Where the law requires it?

A. Yes.

Q. How about you, Mr. Burks?

A. I am in favor of it.

Mr. Hunter: OK.

By Mr. Akerman:

Q. Mr. Bar, you say you live down at Clermont?

A. Yes sir.

[fol. 519] Q. Your business, please, sir?

A. I am a carpenter by trade. But I'm not doing anything now. I'm retired.

Q. Are you fairly well acquainted over in the Groveland section?

A. Well I haven't been over in Groveland. I am acquainted with people over in Groveland.

Q. Do you by any chance know Mr. and Mrs. Willie Padget?

A. No sir. I don't know them.

Q. How about the Tyson family down in Bay Lake?

A. No, I don't know them.

Q. Have you ever heard anything concerning these defendants who live down there, Greenlee, and Shepherd—I mean, Shepherd and Irvin?

A. Who hasn't heard it?

Q. I mean, prior to this incident?

A. It's been the talk around.

Q. You heard some talk around about them?

The Court: Mr. Sheriff, there's a rule that people are not to stand around in the aisles or in the corridors outside. That is not being enforced. I want it enforced immediately and from now on. Get the folks out of the hallways.

All right. Proceed.

By Mr. Akerman:

Q. You say you read something concerning this case?

A. No. I never read anything about it. I have read the [fol. 520] headlines. That's all.

Q. Do you remember which papers?

A. Well, Orlando Sentinel and Clermont paper, there.

Q. Then you heard it discussed some around Clermont?

A. Oh, yes. I have heard it discussed. We even had the military business out there for a while, in Clermont.

Q. Did you discuss it with people?

A. No. I haven't discussed it at all.

Q. You just listened to what was said about it? Some of it, you just had to listen to?

A. They asked me several times if I had made up my mind. I says, "No, I haven't heard the evidence, yet."

Q. You just weren't going to express any opinion on this thing until you came in the courtroom here to hear the evidence on it?

A. Yes.

Q. And you feel that what little, or what you have heard about it, will in no manner affect you in the trial of this case; that you can try it just like you never have heard it?

A. Not a bit in the world.

Q. How long have you lived in Lake County?

A. I came here in 1912. About 37 years, I guess.

Q. Most of it down at the Clermont area?

A. Yes sir.

Q. Do you have a family, sir?

A. I have a wife. That's all.

[fol. 521] Q. What is your feeling toward negro attorneys participating in this case?

A. I feel, because he is a negro, I would protect him and take care of him. If he is in a negro's place. I would protect him and take care of him.

Q. Well, do you feel that, being an attorney?

A. Just the same as I would a white man.

Q. You are talking about negro attorneys? Now is that a negro in a negro's place?

A. Which?

Q. The fact that two of the attorneys for the defendants, here, are negroes

A. I haven't got any illwill feeling at all.

Q. And if they participate in this trial, you feel that it is perfectly all right for them to cross examine the witness?

A. Certainly.

Q. Going to judge them by the same standards of conduct that you are going to judge the white attorneys here in the case?

A. Yes.

Q. Mr. Barr, you live in Tavares?

A. Yes sir.

Q. What is your business?

A. Citrus market.

Q. How long have you lived over here in Lake County?

A. 12 years. I have been in Lake County 14 years.

Q. Now, are you acquainted down in the Groveland area?

A. Yes sir.

Q. Did you ever know Mr. and Mrs. Padget?

A. No sir.

[fol. 522] Q. Tyson family?

A. No sir.

Q. Any of these other witnesses that I read out?

A. Nothing but the deputies. I know them as I see them.

Q. Do you know the deputies?

A. As I see them.

Q. How have you heard or read anything concerning this case?

A. I have read.

Q. What papers did you read it in, sir?

A. Well, fact, I was out of the State, but I, when I first read about it. I read the out of State papers.

Q. From what you read, did you form any opinion?

A. No sir.

Q. Do you feel that you could disregard anything you have read concerning this, start off in a fair trial?

A. Yes sir.

Q. Have you ever served on a jury before, sir?

A. Not in this State.

Q. But you are familiar with the law of this land that, merely because a person is arrested, charged with a crime and brought to trial, that that's no evidence of, or indication of their guilt?

A. No.

Q. And you feel that, subscribe to that law, do you?

A. Yes sir.

Q. And that a person is presumed to be innocent and that [fol. 523] presumption stays with them throughout the trial until it is overcome by evidence or proof of their guilt beyond a reasonable doubt?

A. Yes sir.

Q. Then you feel at the present time that the defendants herein in this case, Charles Greenlee, Samuel Shepherd, and Walter Irvin, are presumed to be innocent right now?

A. That's right.

Q. And you will consider them innocent all the way through the trial until and unless evidence is introduced proving their guilt beyond a reasonable doubt?

A. Yes sir.

Q. And the Court will instruct you that if there is any reasonable doubt in your mind you should resolve it in favor of the defendants?

A. Yes sir.

Q. And, will you do so?

A. Yes sir.

Q. And if, after hearing all of the evidence and the law given to you by Judge Futch, you retire to consider your verdict, if you feel of the opinion that some of the defendants or all of them are innocent, or, that there is a reasonable doubt in your mind as to their guilt, will you then cast your vote for a verdict of not guilty?

A. Yes.

Q. And, having reached that opinion from the law and the evidence in the case, and the testimony that's been given to you here in this case, having reached that opinion, will you abide by that opinion?

A. Yes.

Q. Regardless of who, what may be the feeling of the other members of the jury?

A. Yes.

[fol. 524] Q. And that any verdict coming out of that jury room will be your conscientious belief as to this case?

A. Yes.

Mr. Akerman: What says the State?

Mr. Hunter: Tender.

(At this point, the Court took a 5 minutes recess, at the end of which time, the following proceedings were had:)

Mr. Hunter: We tender the jury.

Mr. Akerman: The defendant, Samuel Shepherd, will excuse Mr. Barr.

Mr. A. B. CRUTCHFIELD, sworn, took his seat in the jury box.

By Mr. Hunter:

Q. Where do you live, Mr. Crutchfield?

A. Leesburg.

Q. How long have you lived there?

A. 19 years. A little better than that.

Q. What is your business?

A. Fruit dealer.

Q. Do you know anything about this case?

A. Well I've heard the street talk, as everyone has, and, over the radio.

Q. Read about it in the newspapers?

A. Yes.

Q. Form or express any opinion as to the guilt or innocence of these particular defendants from what you saw and heard and read?

A. Not expressed opinion. No sir.

[fol. 525] Q. Do you feel that you could try this case fairly on the evidence that you would hear from the witnesses?

A. I do, sir.

Q. Have you any prejudice against the colored people?

A. No sir. I have not.

Q. If taken as a juror, you will give both sides a fair and impartial trial?

A. Yes.

Q. You have been on juries before, here?

A. Several.

Q. Are you conscientiously opposed to the infliction of capital punishment?

A. I am not.

By Mr. Akerman:

Q. Mr. Crutchfield, you say you read the newspaper articles on this case?

A. I heard more street discussion and radio and I read the Orlando Sentinel. Yes sir.

Q. From what you read, did you form any opinion as to the guilt or innocence?

A. As for facts, in this case, I couldn't say I formed any, because I have no facts.

Q. I mean, from what you read in the papers, did you form, or heard discussed, did you form any opinion as to the guilt or innocence.

A. Not as to the guilt or innocence but as to the articles I read. The talk on the street. Would be inclined to read a paper and, what was in there, we would form an opinion from what was in the paper. But not as to either one.

[fol. 526] Q. In other words, naturally, you read the papers, why, you, it had some effect on you?

A. It would have that. According to the papers.

Q. I didn't quite catch the distinction you made. That you formed an opinion, but not on the facts?

A. Not on the facts. I didn't have no facts.

Q. But, from what you read in the papers, did you form

an opinion as to whether these three defendants were guilty or innocent?

A. I have not.

Q. And you don't think that what you have read or heard or the discussion that you heard, or had concerning this case, in any manner affected you as a juror in this case?

A. No sir.

Q. You think that you can now put aside everything you heard and come in here and try this case just like you had never of it until you sat in the box there a few moments ago?

A. I can, sir.

Q. You said you were in the fruit business, Mr. Crutchfield?

A. Yes sir.

Q. Do you have a family here in Leesburg?

A. One daughter. I am divorced. I have one daughter.

Q. How long did you say you lived in Lake County?

A. A little over 19 years.

Q. You are not represented by Mr. Hunter as your attorney, are you?

A. No sir.

[fol. 527] Q. Are you acquainted down in the Groveland area?

A. In a minor sense. I know the B & W Fruit Company, and I have done business there and I know where Groveland is and I have been there. But I wouldn't say that I was acquainted there.

Q. Do you know Norma Padget or her husband, Willie Padget?

A. No sir, I don't.

Q. Do you know the Tyson family down in the Bay Lake area?

A. No.

Q. Do you know Curtis Howard?

A. Yes sir. I do, sir.

Q. What is the nature of your acquaintanceship with Mr. Howard?

A. I have known Curtis for a number of years when he was in school in Leesburg. I know that he works for the Florida Citrus Commission as an inspector and he has been working with his father-in-law recently at the filling station called the Sunshine Service Station.

Q. Been working with his father-in-law?

A. Father-in-law's station. Yes sir.

Q. You trade there?

A. Some. Yes.

Q. Have you discussed this case or heard Curtis Howard talk any of this case?

A. No sir.

Q. How long have you known him?

A. How long have I known him?

[fol. 528] Q. Yes. The best of your memory.

A. I would say 10 years at the longest.

Q. Do you see him quite often?

A. Yes sir. I see him quite often.

Q. Mr. Howard has been summonsed as a State witness in this case.

A. Yes sir?

Q. And in all probability, will testify as one of the State's witnesses in this case. Now, in the trial, as I say, he, in all probability, will testify. Now, because of your acquaintanceship with Mr. Howard, would you be inclined to more readily believe what he said than what some stranger said?

A. I would take the evidence as presented, sir.

Q. Well—

A. I know him, but it wouldn't affect against anybody else.

Q. My question was, even though you take the evidence, but, as to what he said and, what somebody else might say, would you be more inclined to believe him because of having known him this long period of time? And, I gather, very favorably.

A. Nothing but the fact, sir. I would not. I would take the fact.

Q. If you are accepted as a juror, you are going to have to establish what the facts are, and the question I am asking you is that, Mr. Howard testifies, someone else may testify directly in conflict to his testimony. Now in arriving at what you consider to be the facts, and your judgment will be the final judgment on this, would you be more inclined to believe Mr. Howard for having known him favorably for the past 10 years than you would be some other witness whom you didn't know at all?

[fol. 529] A. No sir.

Q. Now two of the defense counsel in this case are negroes, Mr. Crutchfield, participating in the trial of this case. Will that in any way affect you in the trial of this case?

A. No sir.

Q. And do you feel that they are entitled to come in if the Court has ruled that they are entitled to come in?

A. Yes.

Q. And, having come in as defense counsel, you will expect them to act like any other attorney, judge them by the same standards of conduct that you would judge the rest of the attorneys in here?

A. Yes sir.

Q. Even if it is in connection with a cross examination of witnesses?

A. That's right.

Q. As you know, at the trial of a case, the attorneys have to cross examine the witnesses and if they should have to cross examine white witnesses in this case, you wouldn't hold any ill feeling toward them any more than you would toward Mr. Hunter, myself, Mr. Price, Mr. Buoy, on our cross examination, that they are entitled to ask the same questions and, in the same manner and in the same tone that the other attorneys would?

A. Yes sir.

Q. Under the law of our land, which we all live in, every person, black or white, is presumed to be innocent of a crime and that presumption stays with them. The fact that they have been charged with the crime, indicted, brought into Court, here, standing trial, today, under the law, they [fol. 530] are still presumed to be innocent. Could you subscribe to that as your belief, too?

A. Yes sir.

Q. And then you believe right at the present moment the presumption that Charles Greenlee, Samuel Shepherd, and Walter Irvin, three defendants over there, are not guilty of the crime for which they are now on trial?

A. At this moment, yes sir.

Q. And will you continue to clothe them with that presumption all through this trial and unless and until the State introduces evidence proving them guilty beyond a reasonable doubt, you will still consider them innocent. Is that correct?

A. I will, sir.

Q. And if, at the conclusion of all of the testimony in this case, you are of the opinion that one or all of them are innocent or there is a reasonable doubt in your mind as to the guilt of them, then will you vote for a verdict of not guilty?

A. I will, sir.

Q. Then if you have arrived at that verdict, either because of your belief in their innocence or, not because of your belief in their innocence, but because you believe there hasn't been sufficient evidence to prove them guilty beyond a reasonable doubt, and, having arrived at an opinion of a verdict of not guilty, will you remain by that verdict?

A. I will, sir.

Q. And, regardless of how the other gentlemen seated around here may feel about it?

A. Yes.

[fol. 531] Q. In other words, if accepted on this jury, whatever verdict is brought out of that jury room will be your conscientious verdict and not a compromise with any of the others?

A. Yes.

Q. In other words, you will vote for what you conscientiously believe is the right verdict according to the law and the evidence in this case?

A. Yes.

Q. Regardless of how your other jurors may feel or regardless of how other people in this community, State or Nation feel?

A. Yes sir.

Mr. Akerman: The defendant, Samuel Shepherd, will excuse Mr. Lovell and Mr. B. B. Green.

MR. CHARLES E. HERRING and MR. S. B. KNIGHT, sworn, took their seats in the jury box.

By Mr. Hunter:

Q. Mr. Knight, what precinct do you live in?

A. Mascotte.

Mr. Hunter: Under the rule, Mr. Knight will be excused by the Court, I presume.

MR. JAMES M. WATSON, sworn entered the jury box.

Mr. Hunter: Mr. Watson is also from Mascotte.

The Court: All right, Mr. Watson.

[fol. 532] MR. J. B. NORRIS, MR. HURY, were called to the box and sworn.

Mr. Hunter:

Q. Where are you from, Mr. Hury?

A. From Fruitland Park.

Q. Do you know any of the facts and circumstances connected with this case?

A. Only what I have read in the papers.

Q. From what you read in the paper, have you formed or expressed any opinion as to the guilt or innocence of these individual defendants?

A. No sir.

Q. How long have you lived over there?

A. 34 years.

Q. What business are you in?

A. Poultry business.

Q. Do you have any conscientious scruples against the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Do you have any prejudice against the colored race?

A. No sir.

Q. Do you know any reason why you couldn't sit as a fair and impartial juror in this case?

A. I do not.

Q. And I know you would do that, wouldn't you?

A. I would.

Mr. Hunter: You may inquire.—Hold on. I haven't inquired about Mr. Norris.

[fol. 533] Q. Mr. Norris, you live at Lake Jem, don't you?

A. That's correct.

Q. Do you know anything about this case?

A. Just what I have read in the papers.

Q. Did you form or express any opinion as to the individual guilt of these defendants from what you read?

A. No. I don't believe I have.

Q. Do you have any prejudice against the colored race?

A. No.

Q. Could you give them a fair and impartial trial like you would a white man?

A. I would.

Q. Know any reason why you couldn't do that in this case?

A. No sir.

Q. If taken as a juror, would you give both sides a fair and impartial trial?

A. I would.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Norris, what is your business out at Lake Jem.

A. Grove foreman.

Q. How long have you lived in Lake County, Mr. Norris?

A. About 3 years.

Q. Where did you come from?

A. Tampa.

Q. Came from Tampa.

A. Before then.

Q. You say you have heard this case discussed or, you read it in the newspapers, or, just what was the nature of it?

[fol. 534] A. I read the newspapers.

Q. What newspapers did you read?

A. The Orlando paper and the Mt. Dora Topic.

Q. From what you read, you state you formed no opinion concerning the guilt or innocence?

A. No.

Q. Are you acquainted in the Groveland area?

A. No, I am not.

Q. You know none of these witnesses that I have called out?

A. No.

Q. You know nothing of the two defendants, Shepherd and Irvin, who live down in the Groveland area and, knowing nothing of them know nothing of their families?

A. No.

Q. You served on juries before?

A. I have not.

Q. The Court, at the conclusion of the case will instruct you as to the law. And it is my believe that the Court will instruct you that every person is presumed to be innocent of crime and that the mere fact that a person has been arrested by the State or County officials, indicted, and brought to trial is no evidence, whatsoever, of their guilt. Do you believe you would have any trouble subscribing to that view?

A. I don't think so.

Q. And that, even though they have been arrested, charged with the crime, brought in and are now standing trial, they are presumed to be innocent and, that presumption remains with a person accused of crime all the way through his trial unless and until his guilt is proven by [fol. 535] the evidence beyond a reasonable doubt. In view of that being the law of our land, do you now believe that Charles Greenlee, Samuel Shepherd, and Walter Irvin are presumed to be innocent at this very moment?

A. I do.

Q. And will you give them the benefit of that presumption all the way through this trial and if, at the conclusion of the trial after having heard the evidence from the witness stand, it is your opinion that one or all of them are innocent of this charge, or, even that it might be your believe that they are all guilty, if that has not been proven to you by evidence beyond a reasonable doubt, will you vote for a verdict of not guilty?

A. I will.

Q. And, having arrived at that verdict, having arrived at that opinion, would you stand by that opinion regardless of how the other members of the jury might feel or vote on it?

A. Yes sir.

Q. Two of the defendants' counsel in this case are negroes. And will participate in this trial. Does that fact in any way affect you in connection with this case?

A. No. It doesn't.

Q. And, do you feel that if the Court has stated that they are entitled to be defense counsel in this case, that they are entitled to take such part in the case as any lawyer as defense counsel would? Such as cross examining the witness?

A. Yes.

Q. And that you would judge them by the same standard

[fol. 536] of conduct that you would judge any of the white lawyers?

A. Yes sir. I would.

Q. And should one or the other or both of them address the jury, would you pay them the same consideration that you would pay in listening to either Mr. Hunter, Mr. Buoy, or myself?

A. I would.

Q. Do you know of any reason why, if taken on this case, that you cannot be a fair and impartial juror, render your verdict in accordance with the evidence introduced here?

A. No. I don't.

Q. I didn't ask you about your family, did I?

Q. Do you have a family, sir?

A. A wife and three boys.

Mr. Akerman: No further questions.

By Mr. Akerman:

Q. Mr. Hury, you live at Fruitland Park?

A. That's right.

Q. What business are you in, sir?

A. Poultry business.

Q. You have a family, sir?

A. Have a boy and a girl.

Q. And how long have you lived in Lake County?

A. 34 years.

[fol. 537] Q. Now, did you state you had heard or you had read about this case?

Q. I have read about it. Yes sir.

Q. Read it in the newspapers?

A. Newspaper.

Q. What newspapers, please?

A. Times Union and the Orlando papers.

Q. From what you read, did you come to any opinion as to the guilt or innocence of the defendants in this case?

A. No, I haven't.

Q. Do you feel that you could now disregard what you have read or heard in connection with this case?

A. I do.

Q. Try it just like you had never heard anything about it before?

A. That's right.

Q. And, do you feel that, under the law, that as a presumption of innocence, that, at this very moment, there is a presumption that Charles Greenlee, Samuel Shepherd and Walter Irvin, are innocent of this crime?

A. That's right.

Q. And that you will give them the benefit of that presumption all through the trial?

A. I would.

Q. And unless there is evidence proving them guilty beyond a doubt, you will believe them innocent and so vote?

A. That's right.

Q. And that even though at the conclusion of all the evidence, your belief should be that they are guilty, still you have from the evidence or lack of evidence, a reasonable doubt as to their guilt, will you still vote for a verdict of not guilty?

A. Oh, yes. Not guilty.

[fol. 538] Q. And, having arrived at that opinion from the evidence and law given to you by Judge Futch, will abide by that opinion and stand by it?

A. I will.

Q. Regardless of whether the other 11 of the gentlemen here agree with you or decide otherwise?

A. Oh, yes.

Q. You have heard me question the other jurors in connection with the fact that negro defense counsel are appearing in this case?

A. Don't make any difference at all.

Q. You will expect them to act and you will expect them to diligently defend just like you would expect any other counsel?

A. That's right.

Q. And, if they do have the right to cross examine just like any other counsel and, if they should, one or the other or both of them, should one of them be addressing the jury, you show them the consideration of listening to them just as you would any other counsel either for the defense or the State?

A. That's right.

Mr. Akerman: Defendant, Samuel Shepherd, will excuse Mr. Hury.

MR. J. D. OGDEN, sworn, took his place in the jury box.

By Mr. Hunter:

Q. Where do you live?

A. Groveland.

Mr. Hunter: He comes under the rule, Your Honor.

The Court: All right. Excuse him.

[fol. 539] MR. S. B. GAMBLE was called to the jury box and sworn.

Mr. Hunter: Mr. Gamble is from Groveland.

The Court: All right. Mr. Gamble, you're excused.

MR. GEORGE L. HAWKINS was called to the jury box and sworn.

The Court: You gentlemen from Groveland, and Mascotte, don't get it in your heads these folks don't like you up here. They just didn't want to get you into an embarrassing situation. It's been agreed by counsel, in this case.

By Mr. Hunter:

Q. Where do you live, Mr. Hawkins?

A. Right outside of Eustis.

Q. How long have you lived there?

A. Oh, it's been about a year. I have lived in the county right outside of Eustis, here for 5 years.

Q. Where are you from, originally?

A. Ohio.

Q. What is your business?

A. Contractor.

Q. What kind of work do you contract?

A. I develop agricultural land.

Q. You have bulldozers and machinery of that kind?

A. Yes sir.

[fol. 540] Q. Didn't you once live in Tavares?

A. Yes. I lived over here on this end of the lake for a short while.

Q. That's before you went to Eustis?

A. Yes.

Q. And, have you heard any of the facts and circumstances in connection with this case?

A. No sir.

Q. Have you read anything about them?

A. Very little bit.

Q. You therefore have not formed or expressed any opinion as to the guilt or innocence?

A. I haven't.

Q. Do you have any prejudice against them because of their color?

A. No sir.

Q. Do you know any reason why you couldn't sit as a fair and impartial juror in this case?

A. No sir.

Q. If taken as a juror, will you do that?

A. Yes sir.

Q. You have had considerable experience with colored people, haven't you? You work them?

A. Some.

Q. You have no prejudice against them?

A. No.

Q. Are you conscientiously opposed to the infliction of capital punishment?

A. No.

Mr. Hunter: You may inquire.

By Mr. Price:

Q. Mr. Hawkins, you say you are from Eustis?

A. Yes sir. Right outside of Eustis.

[fol. 541] Q. You are a builder, you say?

A. No.

Q. Contractor?

A. Yes. Clear land.

Q. For whom do you principally work?

A. Well, most of the farmers around the county. Citrus growers.

Q. You are not now employed by any of the witnesses or Mr. Hunter or any of us engaged in this case?

A. No sir.

Q. Are you acquainted around Groveland, Mr. Hawkins?

A. No sir.

Q. Have you ever done any construction work over there in that section, Groveland, and Mascotte?

A. I had one little job down there, about a day and a half.

Q. In other words, you didn't stay over there very long?

A. Not very long.

Q. You are not acquainted in that area over there at all?

A. No sir.

Q. Did you hear or could you hear Mr. Akerman when he read the list of the State's witnesses?

A. Yes sir.

Q. You heard all of those names?

A. Yes.

Q. Are you familiar with any of those people?

A. No. Only a couple of the deputy sheriffs and I just know them when I see them.

Q. Just kind of a speaking acquaintance?

A. That's all. Just wave as you go by.

Q. And howdie, and that's it? Now you know, Mr. Hawkins, that there is a presumption that any one who stands trial charged with a crime, there is a presumption that that [fol. 542] person is innocent. You know that?

A. Yes sir.

Q. And that that presumption stays with that person, presumption of innocence, all the way through the trial until and unless there is sufficient evidence introduced by the prosecution to erase every reasonable doubt as to the innocence or guilt of that person. In other words, that person is presumed to be innocent of the crime notwithstanding the fact that he has been charged with the crime after he has been arrested and that he is here standing trial for it, that presumption stays with him all the way through. It must be overcome and, as long as there is even a reasonable doubt as to it, he must be given the benefit of that reasonable doubt. As to the question of his innocence, Are you willing to subscribe to that principle?

A. Yes sir.

Q. You are willing, and you do presume now that these three defendants are innocent?

A. Yes sir.

Q. And you will continue to give them the benefit of that presumption until there is sufficient evidence introduced here?

A. That's right.

Q. To overcome that presumption and to erase the presumption entirely?

A. Yes sir.

Q. And if there is even a reasonable doubt in your mind of the innocence of the person, then will you resolve your doubt in favor of the defendants?

A. Yes sir.

[fol. 543] Q. In other words, the slightest reasonable doubt, you will resolve in favor of these three defendants?

A. Yes sir.

Q. Of course, now, we have said before, we do have two negroes as counsel for the defense. Do you have any objection or any feeling? Will you entertain any feeling in your mind if you see these two negro counsel here questioning the witnesses in this case?

A. No sir.

Q. And of course, you — that on cross examination, at times, the questioning becomes pretty rapid and of course, you realize that possibly in this case, we expect that probably there will even be young ladies put on the stand. Do you think that will arouse any feeling against these counsel that we have, here?

A. No.

Q. All right. Are you a family man, Mr. Hawkins?

A. No sir.

Q. You are still enjoying single blessedness?

A. Yes sir.

Q. I think you stated that you had not made any definite opinion about this case?

A. No. I haven't.

Q. You read the newspapers, probably?

A. Well, two small accounts. One in the Topic and one in the Sentinel, I think it was.

Q. But you are willing to come in here with no set opinion?

A. That's right.

[fol. 544] Q. And to listen to the evidence in this case and make your verdict solely on that?

A. Yes sir.

Q. Now in the event that you become convinced of the guilt or innocence of these defendants, and we'll say that perhaps some, or even all 11 others of these jurors, are set in the other direction. Do you think that there is any chance that you might go ahead and give in to them or, will you

maintain your own view of the evidence that's presented?

A. Yes sir.

Mr. Hunter: We tender the jury.

Mr. Price: All right. The Defendant, Samuel Shepherd, Your Honor, excuses Mr. Burke.

Mr. ROBERT B. REVELS, sworn, was called to the box.

Mr. Hunter:

Q. Where do you live, Mr. Revels?

A. Howie.

Q. How long have you lived in Howie, Mr. Revels?

A. About 15 years.

Q. Who was your father?

A. George Revels.

Q. Have you heard any of the facts or circumstances in connection with this case discussed?

A. Well, yes sir.

Q. What is it you have heard? Neighborhood rumor?

A. Yes sir.

Q. You haven't heard any of the witnesses or any person who purported to know anything about the facts, have you?

A. No sir.

[fol. 545] Q. Have you read anything in the newspapers about it?

A. A little bit. Yes sir.

Q. Now from those things, have you formed or expressed any opinion as to the guilt or innocence of these individual defenders?

A. No sir.

Q. Do you have any prejudice against the colored race which would preclude you from giving them a fair and impartial trial?

A. No sir.

Q. Do you know any reason why you couldn't sit as a fair and impartial juror in this case?

A. No.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Price:

Q. Mr. Revels, did you read any newspaper accounts of this happening?

A. Yes sir. Some.

Q. Which papers did you read, sir?

A. The Orlando paper.

Q. The Orlando Sentinel Star?

A. Yes sir.

Q. You didn't form any opinion, however, as you read them?

A. No sir.

Q. All right. Are you a family man, Mr. Revels?

A. Yes sir.

Q. Who, what are the members of your family?

A. Wife and two children.

[fol. 546] Q. Boy and girl?

A. Two girls.

Q. Mr. Revels, have you ever served on a jury before?

A. No, I haven't.

Q. Never have. Well, Judge Futch will, I am sure, instruct you, after all the evidence has been put in in this trial, will instruct you that there is a presumption in a criminal prosecution, there is a presumption of the innocence of the party charged with the crime at the trial. Now the fact that he has been arrested, the fact that he has been charged with the crime, and been brought into Court, is not evidence of any sort as to his guilt. But rather, that there is a presumption that that person is innocent of any crime until evidence has been introduced to prove beyond a reasonable doubt that that person is guilty of the crime. Now, do you believe that in your own mind, right now, that you can give these three defendants, Irvin, Shepherd, and Greenlee, the benefit of that presumption? In other words, are you willing, as you sit there in the jury box, at this time, and on through to the end of the trial, are you willing to sit there and presume that these three defendants are innocent until, if and until, enough evidence has been introduced to show it to you beyond a reasonable doubt that they are innocent of this crime?

A. Yes sir.

Q. Now, as we have said before, two of the counsel for defense in this case are negroes. Do you think that that

would influence your feeling at all if you sit on the jury? [fol. 547] Of course it will probably become necessary from time to time for them to question, even perhaps vigorously, the various witnesses in this case. Do you think that that will create any feeling on your part that would prejudice the defendants?

A. No sir.

Q. Mr. Watson, do you know Norma Padget?

A. No sir. I don't.

Q. Do you know her husband, Willie Padget?

A. No sir. I don't.

Q. Do you know Same Dotto, or Howard Crowell?

A. No sir.

Q. Now Mr. Akerman read the list of State's witnesses here, before. Did you hear Mr. Akerman read that list of names?

A. Yes sir.

Q. You heard him at the time. It won't be necessary for me to ask you all of those, individually. Were there any names which Mr. Akerman read then, of people with whom you are acquainted?

A. I don't believe there was.

Q. There were not, that you knew?

A. No sir.

Q. Are you acquainted around Groveland?

A. Yes sir. Some.

Q. Are you acquainted with the defendants in this case?

A. No sir.

Q. Are you perhaps acquainted with their families? The Irvings and the Shepherds?

A. No sir.

Q. Are you acquainted with the Tyson family, sir?

A. Yes sir.

[fol. 548] Q. You are? Just what is your acquaintance with the Tyson's? Has it been over a number of years?

A. Yes sir. I have known the father for a good many years.

Q. Would you say that they had been rather good friends of yours for a number of years?

A. Yes sir. I would.

Q. Well do you think that being and having been acquainted with the Tyson's in a very friendly way for a number of years, that that would influence your feeling

in this case at all? Perhaps arouse sympathy on your part, which of course, I believe would be natural?

A. I don't believe it would. No sir.

Q. Of course, now, it would be a very natural thing if it did. I could understand that of course. About how many years have you known the Tyson family, Mr. Revels?

A. 20 years, I imagine.

Q. Do you know Norma Padget, who was Norma Tyson?

A. No, I don't.

Mr. Akerman: We challenge Mr. Revels for cause if he is a friend of the family of the prosecutrix for a period of 20 years?

By Mr. Hunter:

Q. How far do you live from the Tyson's?

A. I don't even know where the Tysons live.

[fol. 549] Q. Is your acquaintance just an acquaintance with those people?

A. Well, I consider the father a good friend of mine. I have known him for many years.

Q. How long since you saw him?

A. Well, I see him every few days.

Q. Where at? Does he visit your house?

A. No. I see him up around the store where I work.

Q. Would the fact that you know him in any way affect you in the reception of the testimony in this particular case? Could you pass on the testimony here without being influenced at all by the fact you know Mr. Tyson?

A. I think I could. Yes sir.

Q. Well do you know whether you could or not?

A. I believe I could.

Q. Is that as far as you can go on it?

A. Yes sir.

Q. You don't know, then whether it would affect you or not?

The Court: I think we better excuse Mr. Revels on the challenge for cause.

Mr. C. E. HARDEN was called to the box and sworn.

By Mr. Hunter:

Q. Where are you from, Mr. Harden?

A. Mt. Vernon.

[fol. 550] Q. How long have you lived in Mt. Vernon?

A. 56 years.

Q. Do you know anything about this case?

A. I read a little in the papers.

Q. From what you read in the papers, did you form or express any opinion as to the guilt or innocence of the defendant?

A. Yes. I believe I did.

Q. Beg pardon?

A. Yes sir.

Q. Is that a fixed opinion?

A. Well, I don't know. I believe it is.

Q. You would try a man then, by what a newspaper said?

A. I believe it is.

Q. You tried a man, then, by what that newspaper said? Rather than the evidence produced before the Court.

Mr. Akerman: If the Court please, I don't believe that question is proper.

(Whereupon, it was argued to the Court.)

Mr. Akerman: I object to the question in the form it is in. Argumentative type.

The Court:

[fol. 551] I think the question is a little bit out of line.

Q. Which would you give precedent in the trial of this case; what you read in the newspapers or the testimony you heard from the witness stand?

A. Well, the evidence from the witness stand is what I would go by. When I'm somewhat prejudiced on the case.

Q. You are prejudiced on the case?

A. Yes sir. I am prejudiced on the case.

Mr. Hunter: OK. I think the gentleman is disqualified.
The Court: All right. Come down.

MR. FRANK OBERHOLTZER was called to the box and sworn.

By Mr. Hunter:

Q. Where do you live, Mr. Oberholtzer?

A. Yalaha.

Q. How long have you lived there?

A. About 35 years.

Q. What business are you in?

A. Citrus groves.

Q. Have you heard any of the facts or circumstances in connection with this case?

A. No.

Q. Have you read anything about them?

A. Just read the paper. The Orlando Sentinel.

Q. From what you read, have you formed or expressed any opinion as to the guilt or innocence of these defendants?

A. No.

[fol. 552] Q. Do you have any prejudice against them because of their race?

A. No.

Q. Do you know any reason why you could not sit as a fair and impartial juror in this case?

A. No.

Q. If taken as a juror, will you do that?

A. Sure.

Mr. Hunter: You may inquire.—

Q. Are you opposed to capital punishment in those cases where the law authorizes it?

A. No.

By Mr. Price:

Q. Mr. Oberholtzer, you say you have lived here 35 years?

A. Yes sir.

Q. And you are a citrus man?

A. Yes.

Q. Are you a family man, Mr. Oberholtzer?

A. Yes sir.

Q. How many members do you have in your family?

A. Wife, boy, and 4 girls.

Q. Which newspaper was it you say you read?

A. Orlando.

Q. Mr. Oberholtzer, are you acquainted with the Tyson's down there?

A. No. I never heard of them.

Q. Well, I guess they're kind of different ends of the county from you. Do you know Norma Padget?

A. No sir.

Q. Or Willie Padget?

A. No.

Q. Well, you probably heard the rest of these State's witnesses read by Mr. Akerman. Do you know any of them?

A. No.

[fol. 553] Q. Do you know any of these three defendants?

A. No. Never saw them before today.

Q. Are you acquainted at all around Groveland or Mascotte?

A. No sir.

Q. Now you know, Mr. Oberholtzer, there is a presumption in the law that a person is innocent of a crime. That is, even though he has been arrested and charged with that crime, there is still a presumption that he is innocent and that presumption carries from the beginning of the trial right on through till the time you go in the jury room, unless and if there is sufficient evidence presented of his guilt to convince you in your own mind beyond a reasonable doubt of his guilt. Now, are you willing to presume that these defendants now are innocent?

A. Yes.

Q. And you are willing to go on all the way through the trial and if not enough evidence is presented to satisfy, if the State introduces a great deal of evidence but perhaps not enough evidence to convince you beyond a reasonable doubt that these defendants are guilty, are you willing to carry that presumption over and give them the burden of that presumption?

A. Yes.

Q. (Continued) Of their innocence to the end. All right. And you have not formed any fixed opinion or any opinion, about this trial?

A. No. I don't know enough about it.

Q. All right, sir. Now of course you heard before, we

[fol. 554] do have two negro attorneys here, as defense attorneys in this case. Do you think that their being here and acting as attorneys in the case might have the same effect that Mr. Hunter, Mr. Akerman? Do you think that that will create any feeling at all on your part?

A. No. I don't think so.

Q. Of course, you realize at times that it might be necessary to vigorously cross examine the witnesses in this case, and who, of course, for the most part, I expect, will be white people. Do you think that that will create any feeling in your mind at all?

A. No.

Q. And you have no prejudice, feeling, against the negro race?

A. No sir.

Q. All right. Do you know of anything, Mr. Oberholtzer, which would be a bar to your sitting on the jury in this case, which would influence your mind at all in favor of either the innocence or the guilt of these parties?

A. No sir.

Mr. Akerman: What says the State?

Mr. Hunter: Tender.

(The court then took a five minute recess, at the end of which time, the trial continued as follows.)

[fol. 555] Mr. Akerman:

Q. The defendant, Samuel Shepherd, will excuse Mr. Oberholtzer.

Mr. JAMES E. BEVIS, was called to the box and sworn.

By Mr. Hunter:

Q. Mr. Bevis, where do you live?

A. Leesburg.

Q. What is your business or profession?

A. School Supervisor, Elementary Education in Lake County.

Q. How long have you lived in Lake County?

A. 7 years.

Q. Have you heard any of the facts or circumstances in connection with this case discussed?

A. Nothing except in the papers and over the radio.

Q. From what you heard, did you form or express any opinion as to the guilt or innocence of these defendants?

A. No sir.

Q. Have you any prejudice against the colored race that would hamper you in any way in forming a proper verdict in this case?

A. No sir.

Q. Do you know any reason why you couldn't sit as a juror in this case?

A. No sir.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Price:

[fol. 556] Q. You live now in Leesburg?

A. Yes. That's right.

Q. You did live in Tavares before you lived in Leesburg?

A. That's right.

Q. You, how long have you lived in Lake County?

A. 7 years.

Q. You read in the newspaper the accounts of this?

A. Mostly the headlines.

Q. Which papers would that be in?

A. Orlando Sentinel and Leesburg Commercial.

Q. Are you a family man, Mr. Bevis?

A. Yes sir.

Q. How many members?

A. I have a wife, two daughters and one son.

Q. Are you acquainted with any of the Tyson's, Mr. Bevis?

A. No sir.

Q. Or, with Norma Padget?

A. No sir.

Q. Willie Padget?

A. No.

Q. You have heard the list of these State witnesses read?

A. Yes.

Q. Do you know any of those witnesses?

A. I know the two deputy sheriffs. And the highway patrol.

Q. Do you know them well?

A. No. Just me having been in the County Superintendent's office, I naturally know the deputy sheriffs and just recently I moved next door to Howard.

Q. Was that a short while ago?

A. Just a short while ago. In fact, I have only known him for 2 or 3 days.

[fol. 557] Q. Have you discussed this case with him at all.

A. No sir.

Q. In other words, you do know a couple of the deputies and the highway patrol, but your acquaintance with them is just an acquaintance?

A. Know the Highway Patrol, Yates, and Leroy Campbell.

Q. Well now, you are not—

A. They are both deputy sheriffs.

Q. Well, the point I am getting at, sir, is that your acquaintance with them is not what you would call a deep friendship. It is more of a speaking acquaintance?

A. That's right.

Q. In other words, your acquaintanceship with either of the three of them wouldn't affect your opinion or your stand or your feeling about this case or anything connected with it?

A. Not at all.

Q. Have you ever seen any of the three defendants?

A. No sir. Not that I know of.

Q. You are not acquainted with any of their families?

A. Not that I knew of. I would know it if I was. And I know I am not.

Q. Has your school work ever taken you over around Groveland or Mascotte?

A. It carries me all over the county.

Q. In other words, in your supervisory capacity you do visit from place to place throughout the county?

A. Every school in the county. Yes sir.

[fol. 558] Q. Do you have any particularly good friends in Groveland or Mascotte?

A. Mostly among the teachers and people who are connected with the schools.

Q. You haven't discussed this case with them?

A. No.

Q. Your acquaintance with them wouldn't affect this case?

A. No.

Q. Have you ever served on a jury before, sir?

A. No sir.

Q. Well, at the close of all the evidence in this case, the Court here, Judge Futch, will instruct you as to the law in the case. Now, part of that instruction, I am sure, will be to the effect that where a person has been charged with a crime and is standing trial, that there is a presumption of that person's innocence of that crime. That's not withstanding the fact that he has been arrested, charged with that crime, that there's been various statements circulated but there is a presumption of his innocence. That presumption carries on throughout the trial until and if, of course, the prosecution introduces sufficient evidence to convince you beyond a reasonable doubt that this person is guilty, that presumption carries over and that person is considered innocent.

Now are you willing to subscribe to that principle?

A. Yes sir.

Q. Of course you understand now that if there is any question, any serious question in your mind, as to the innocence of that person, that that doubt must be resolved [fol. 559] in favor of the defendants and you must give your verdict accordingly?

A. That's right.

Q. Now if you arrive at a conclusion, either one way or the other, either as to guilt or innocence, then that will be your opinion and that will be your opinion from that time on until the time you come in, even though eleven of the other jurors might be against you in your particular opinion, whether it is either for guilt or innocence?

A. That's right.

Q. And the gates of hell shan't prevail against you. You will stand on your opinion and whatever verdict is reached in this case will be your opinion?

A. That's right, sir.

Q. You haven't formed any opinion from reading the various newspaper articles?

A. No sir.

Q. In other words, as you come in here to sit in this jury box, you have no opinion as far as this case is concerned?

A. No sir.

Q. And you are willing to sit there and listen to the evidence as presented from both the prosecution and the defense and make up your mind and render your verdict entirely according to what you believe is in the right, here?

A. Yes sir.

Mr. Akerman: How says the State?

Mr. Buoy: Tender.

Mr. Akerman: The defendant, Samuel Shepherd, will excuse Mr. Edmunds.

[fol. 560] MR. ROYAL E. WEIDNER, was called to the box and sworn.

By Mr. Hunter:

Q. Mr. Weidner, where do you live?

A. Leesburg.

Q. How long have you lived there?

A. 11 years.

Q. What do you do?

A. Citrus grower.

Q. Have you heard any of the facts and circumstances connected with this case?

A. Just what I have read in the papers.

Q. Formed or expressed any opinion from what you heard?

A. Yes sir.

Q. Formed and expressed it, both have you?

A. Yes sir.

Q. Well, is it fixed?

A. Yes. Absolutely.

The Court: All right. Mr. Weidner, you are excused.

Mr. WILLIAM F. AUSTIN, JR., was called to the box and sworn.

By Mr. Hunter:

Q. Where do you live, Mr. Austin?

A. Umatilla.

Q. What is your business or profession?

A. Citrus grower and packer.

Q. How long have you been up in that section?

A. 35 years.

Q. Have you heard any of the facts or circumstances in connection with this case discussed?

A. No sir.

[fol. 561] Q. Read anything about it in the newspapers?

A. About everything that is in the papers.

Q. You read all the papers on everything that way, don't you?

A. Yes sir.

Q. Well did you form or express any opinion as to the guilt or innocence of the defendant?

A. No sir.

Q. The guilt or innocence of these three?

A. That's right.

Q. Do you know anything about them?

A. I don't know any of them. I have never seen them before.

Q. Could you try those men fairly on the evidence that you would hear from the witness stand, here?

A. Yes sir.

Q. Do you have any prejudice against them because they are colored people?

A. No sir.

Q. Are you opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Austin, what newspapers did you read on this?

A. The Orlando Sentinel, the Tampa Tribune. Eustis Lake region.

Q. And you said you just read what was in the papers?

A. That's right.

Q. You didn't form any opinion as to the guilt or innocence of these three defendants over here?

A. Not those three, no sir.

Q. And you feel that if accepted on this jury, you can serve on this jury and be the same fair, impartial juror you would have been if you hadn't heard any or read anything about this case?

A. Yes sir. The papers don't influence me at all.

Q. In other words, you would just dismiss that from your mind now and listen to the evidence that comes from the witness stand and the law that Judge Futch gives you?

A. Right.

Q. And if it should occur that something you read in the newspaper is not brought out on the evidence, why, that wouldn't bother you at all. We'll just push that back and go ahead and, just as if you had never heard it at all?

A. That's right.

Q. You say you have lived in Umatilla for about 35 years?

A. Yes sir.

Q. Do you have a family, Mr. Austin?

A. Yes sir. A wife and three sons.

Q. You have served on juries before?

A. No sir.

Q. You have heard the questions we have asked the other jurors in connection with the fact that under our system of law, in this country, that any person, regardless of their economic or political or any other standing, race, is presumed to be innocent of any crime unless and until they are proven guilty?

A. Yes sir.

[fol. 563] Q. Now you certainly subscribe to that theory, don't you, Mr. Austin?

A. Yes.

Q. And, at the present moment, since there has been no evidence introduced in this case, you are presuming that Charles Greenlee, Walter Irvin, and Samuel Shepherd, over there, are innocent of this crime?

A. Yes sir.

Q. And you are going to sit here and compel the State to introduce evidence that will convince you beyond a reasonable doubt of that guilt before you ever cast a vote for a verdict of guilty?

A. Absolutely.

Q. And you are also familiar with our system of law that

even though you might believe they were guilty, if there is any reasonable doubt arising in your mind as to their guilt or either from the evidence that's been introduced or for the lack of evidence that you are, under the law, charged with the duty of resolving that doubt in favor of the defendants and you will certainly do that, won't you?

A. That's right. I do think that somebody is guilty.

Q. Yes. But merely the fact that because of the fact that every crime has been committed, that somebody is guilty, you are not going to be satisfied to just see somebody found guilty to solve that crime and get it out of the way?

A. No.

Q. What you want is the guilty person brought to justice. Is that right, Mr. Austin?

A. That's right.

[fol. 564] Q. And you would be just as quick to fight to keep somebody who was not guilty from being brought to justice as you would to see anybody that was guilty?

A. That's right.

Q. In fact, you would rather, if there was any doubt in your mind, resolve it in favor of the defendants, would you not?

A. Yes sir.

Q. And that's what you would do if you are selected to serve on this jury?

A. That's right.

Q. And after hearing all of the evidence, if you believe that these defendants, or any of them, are innocent or there is a reasonable doubt arising in your mind as to their guilt, when you go into the jury room you are going to vote for a verdict of not guilty. Isn't that a fact?

A. Yes sir.

Q. And when you have arrived at that conclusion, that opinion, based on the law and the evidence, that's going to be your opinion, isn't it, sir?

A. Yes sir.

Q. And, regardless of how other members of the jury may feel, or other people in Lake County or Orange County or anywhere else, you are going to abide by that opinion?

A. I am.

Q. And when the verdict of the jury is brought out it will be your conscientious verdict in this case?

A. Yes. That's right.

Q. Are you acquainted down in the area down there where this occurred?

A. No sir. I am not.

Q. Are you acquainted with the Padgett family?

A. No sir..

[fol. 565] Q. The Tyson family down there?

A. I don't know them at all. No sir.

Q. Have you ever, until this case came up, have you ever heard of any one of these three defendants?

A. No, I haven't.

Q. Or their families?

A. No sir.

Q. How about the rest of these witnesses? I guess you know some of the deputy sheriffs or something like that, don't you?

A. I know Deputy Yates. Just casually.

Q. What is the nature of that acquaintanceship you have with Mr. Yates, Mr. Austin?

A. I just know that he is a deputy sheriff and speak to him in that manner.

Q. And the mere fact that you know him and he is a deputy sheriff, you wouldn't give either more or less credence to what he said than you would to any other witness?

A. I would not.

Q. Now, as you know, two of the defense counsel in this case are negroes and are going to participate in the trial. Does that in any manner affect you sitting on the jury here?

A. It would not.

Q. Do you feel that since they are defense counsel that they should discharge their duty just like any other lawyer?

A. I do.

Q. And will hold them to the same code of conduct that you hold the rest of the lawyers in this case to?

A. Yes sir.

Q. Even though it may be necessary in this case for them to cross examine witnesses and vigorously cross examine witnesses?

A. Yes sir.

[fol. 566] Q. You will consider them as attorneys in this case and pay no attention to their race or color?

A. That's right.

Q. Do you know of any reason why, if accepted to serve on this jury, you could — sit here and calmly and fairly deliberately give a fair and impartial trial and render a

fair and impartial verdict? Fair, on the one hand, to the people of Lake County and the State of Florida, and, on the other hand, to the three defendants over here. After all the verdict which is fair is fair to all of them. That's what you will do if you are accepted on this case?

A. Yes sir.

Mr. Akerman: What says the State?

Mr. Hunter: We tender the jury.

Mr. Akerman: The defendant, Samuel Shepherd, will excuse Mr. Hartwright. The defendant, Walter Irvin, will excuse Mr. Hawkins.

Mr. B. E. REAVES, JR., Mr. S. C. CANNON, were called to the stand and sworn.

By Mr. Hunter:

Q. Mr. Cannon, where do you live?

A. Astatula.

Q. How long have you lived there?

A. About 7 years.

[fol. 567] Q. What is your business?

A. Take care of groves.

Q. Have you heard the facts and circumstances in this case discussed?

A. Just a few catches along.

Q. Have you read about the case in the newspapers?

A. Not too much.

Q. From what you have heard and what you have read, have you formed or expressed an opinion as to the guilt or innocence of these defendants?

A. No. I haven't.

Q. Are you conscious of any prejudice against the colored race which would keep you from giving these men a fair and impartial trial?

A. No.

Q. If you are taken as a juror, will you give them a fair and impartial trial from the law and the evidence?

A. I will.

Q. Mr. Reaves where do you live?

A. Lady Lake.

Q. How long have you lived there?

A. 15 years.

Q. What is your business?

A. Trucking contractor.

Q. Do you know anything about the facts or circumstances in connection with this case?

A. Nothing but what I have read in the papers and street talk.

Q. From what you have read, have you formed or expressed an opinion as to the guilt or innocence of these defendants.

A. Well, yes and no. I sometimes form an opinion by reading the papers.

Q. Could you lay aside anything that you have read in the [fol. 568] papers or heard and try these men solely on the evidence given here?

A. Yes, I could.

Q. Would you do that if you were taken as a juror?

A. Yes sir.

Q. Have you any prejudice against the colored race that would hamper you in any way in the trial of this case?

A. No sir.

Q. If taken as a juror, will you give both sides a fair and impartial trial?

A. Yes sir.

Mr. Hunter: You may inquire.—

Q. Another thing. Have either of you gentlemen, Mr. Cannon, and Mr. Reaves, any conscientious scruples against the infliction of capital punishment in those cases where the law authorizes?

A. (Mr. Reaves) No. (Mr. Cannon) I would want sufficient evidence.

Mr. Hunter: You may inquire.

By Mr. Price:

Q. Mr. Cannon, how long have you lived in Lake County?

A. About 12 or 14 years.

Q. Where did you live prior to that time?

A. I lived up here at Altoona a while and then moved to Astatula.

Q. Did you read the papers on this thing?

A. Very little reading I do. I listen to the radio and that's about all.

[fol. 569] Q. Did you come to any opinion about this?

A. No sir.

Q. Did you talk about this with your friends?

A. No sir.

Q. Neighbors?

A. No sir.

Q. And you haven't made any definite opinion about the thing at all?

A. No sir.

Q. What did you say your business was?

A. Grove caretaker.

Q. You heard the list of the State witnesses, I imagine, when Mr. Akerman called them off. On that list, I have Norma Padget. Do you know Norma Padget?

A. No sir. I don't know her.

Q. Or her husband, Willie Padget?

A. No sir.

Q. Are you acquainted with any of the Tyson family?

A. No.

Q. Do you know any of the people on that list of witnesses Mr. Akerman called?

A. No. I don't know any of them.

Q. Do you know the defendants, over here?

A. No.

Q. Mr. Cannon, are you acquainted around Groveland at all?

A. No sir. I only go there when I go to Ft. Meade. I go through Groveland.

Q. Are you acquainted at all around Bay Lake, Mascotte, or through there?

A. No sir.

Q. Now have you ever served on a criminal jury before?

A. No sir. I haven't.

[fol. 570] Q. Well, when all the evidence has been put in in this case and before you go to the jury room, the Judge will instruct you on the law in this case. Now are you willing, to abide by the instructions of the Court as to the law?

A. As far as it lays within me.

Q. Well do you believe that as a member of the jury that it is up to you, we'll say to follow the law as the judge gives it to you regardless of personal feelings in the matter?

A. That's right.

Q. In other words, whatever Judge Futch tells you then, that is the way you will order your own decision in this case?

A. That's right.

Q. All right. One of the things which Judge Futch will probably I'm sure tell you, before you go on into the jury room, is that any person, any person in the United States, or any person in Florida, this is the law, that any person who is charged with crime is presumed to be innocent of that crime. The fact that he has been arrested for that crime, the fact that he has been charged with that crime and brought into Court here and charged and the fact that various witnesses will come into this trial and present evidence that he committed that crime; all of those things, notwithstanding, there is still a presumption that this person is innocent until and unless there is sufficient evidence of his guilt introduced here and the facts which the witnesses, themselves, will give to you to establish the guilt of that person beyond a reasonable doubt. Now, are you willing to [fol. 571] presume now at this particular time to presume that these three defendants are innocent?

A. As far as I know, they are.

Q. You are willing to give them the benefit of that presumption?

A. That's right.

Q. In other words, you are willing to sit here and, in your own mind, erase anything you might have read in the papers or heard on the radio, you are willing to come in here with a free and open mind?

A. That's right.

Q. And sit here and listen to the evidence that's presented to you?

A. That's right.

Q. And to make your decision in this case based solely on that?

A. That's right.

Q. And while you are doing that, to give these three defendants the benefit of the presumption that they are innocent?

A. Yes.

Q. Until it is proven that they are not by competent evidence?

A. That's right.

Q. All right. Now under another principle of law, you also know that even though there is evidence introduced which would tend to show to you that they were guilty, that if there is any reasonable doubt in your mind, whatso-

ever, if there is any reasonable doubt of the guilt of the three defendants, that it is up to you then, under the law, to resolve that doubt in favor of these defendants and to find them not guilty. And, are you willing to abide by that rule?

A. Yes. I am.

Q. Are you familiar with that?

A. I am.

Q. Are you a family man?

A. Yes. I am. 7 children.

[fol. 572] Q. How many of those children are boys and how many are girls?

A. I got 5 boys and 2 girls.

Q. Mr. Reaves, what is your business or occupation?

A. I am a trucking contractor.

Q. How long have you been in the trucking business?

A. Oh, about 15 years. Off and on.

Q. Were you ever a law enforcement officer?

A. No sir.

Q. And where do you live, sir?

A. Lady Lake.

Q. Your business is at Lady Lake, too, sir?

A. No sir. Leesburg. It is now Foremost Fertilizer Company.

Q. Are you acquainted down in the Groveland area?

A. Yes sir.

Q. Do you know Mrs. Norma Padget and her husband, Willie Padget?

A. No sir. I don't know them.

Q. How about the Tyson family?

A. No sir.

Q. Mrs. Padget was a Tyson. You don't know any of them down there?

A. No sir.

Q. Did you hear the list of names?

A. I might know them just as looking at them, but I never met them or anything like that.

Q. You heard the list of names that I read off?

A. Yes sir. I know Howard and, both the deputy sheriffs.

Q. Do you know Curtis Howard?

A. Yes sir.

Q. Both deputy sheriffs?

A. That's right.

[fol. 573] Q. What is the nature of your acquaintanceship with Mr. Howard?

A. Just the casual acquaintanceship as I am in town, maybe shoot a game or two of pool with him, something like that.

Q. How long have you known him?

A. Oh, I would say 5 or 6 years, maybe longer.

Q. How long have you known Mr. Yates, the deputy sheriff?

A. Well, I wouldn't even say that I knew Mr. Yates only that somebody told me, "there goes Mr. Yates, the deputy sheriff," and it sticks in my mind because of the car he drives and stuff like that because I am a trucking contractor, I look out for that.

Q. How about these highway patrolmen? Do you know any of them?

A. Well, yes sir. I know them.

Q. Think it's a good idea for us to have them over here, right now? Do you have a family, Mr. Reaves?

A. Yes sir. Wife and stepdaughter.

Q. Now have you heard or read anything concerning this case?

A. Yes sir. I have.

Q. You have, sir?

A. Yes sir. I read everything that was in the Orlando paper about it. Leesburg papers, and the Tampa papers.

Q. Have you heard anybody discussing it?

A. Yes sir.

Q. Quite a good bit of discussion?

A. No. Not too much. Just street talk.

Q. From what you heard, did you form any opinion in the case?

A. No sir. Because I didn't know any of the facts and I didn't go down through Groveland and don't know any of the facts, so I didn't form any opinion.

[fol. 574] Q. And you have served on juries before, haven't you?

A. Yes sir.

Q. And probably know a lot of times in connection with a case you read a lot of things in the newspaper?

A. That's right.

Q. Then you come in the trial of the case and it is entirely different and you learn things in the trial that were never in the paper, and a lot of the things that were in the

newspapers you never hear about in the actual trial? Well now, do you feel with that in view, that you can remove any of these various newspaper accounts that you have read from your mind so that after you hear the evidence in this case, there won't be any question of whether what you heard was evidence in here or was this something that you read in the newspaper?

A. Yes. I think I can. I know I can.

Q. You make every conscientious effort you can and you believe you can?

A. That's right.

Q. And if, after the evidence is all in, if there was something in the newspaper that if it had come from the witness stand might make you firmly convinced of the guilt, as long as it didn't come in the witness stand, you would disregard it?

A. That's not the facts.

Q. And vote for a verdict of not guilty? If you see what I mean?

A. Yes sir.

[fol. 575] Q. If, in connection with the evidence that you heard that it would take something that you had read in the newspaper, you would have no trouble disregarding that and vote for a verdict of not guilty?

A. Right.

Q. Now you know that two of the defense counsel in this case are negroes. And they will participate in this trial as lawyers. Does that in any way affect you in the trial of the case?

A. No.

Q. And if they should, in their participation in their duties as counsel have to cross examine a witness or have to object to certain of the State's questions, would that affect you in any way?

A. No.

Q. You would hold them to the same course of conduct in this trial that you would hold Mr. Hunter, Mr. Buoy, myself or any other lawyer?

A. Yes sir.

Q. In other words, I believe you stated that you had served on juries, or had not?

A. Have.

Q. You have served on juries. You know how trials go.

You know, in connection with the trial, they may be asking a question and Mr. Hunter thinks it is improper and he has to jump up and say, "I object, Your Honor." And the same way, Mr. Hunter might be asking a question and I'll have to do that. Well, suppose Mr. Hunter is asking a question and one of the colored counsel had to jump up and object to it. You wouldn't have any feeling or prejudice in the case, would you?

A. No sir.

[fol. 576] By Mr. Price:

Q. Are you sure on that?

A. Well, I think in this case, I could.

Mr. Price: It is a real factor.

Mr. Akerman:

Q. We are trying to present the facts to all of you gentlemen. I know that there is not a person in this courtroom, either sitting up here or back there, that would want to serve on this jury that wouldn't do anything but render a fair and impartial trial and that's the reason we are trying to bring these facts out to you now so that you will know what the situation is and then, your answers you can answer them now.

Of course, Mr. Reaves, you are the only person that could know, in your own mind, and that's what I want you to consider on the thing.

A. That's right.

Q. You think you would feel the same way if he jumped up and objected to what Mr. Hunter said? Or, should he sit down and keep quiet about it?

A. Well, if it looked like he should. If he had a right to do that, he should be able to do it.

Q. Well I mean now of course, that's going to become a question for the Court to decide and a lot of occasions, the lawyers have to place an objection in and after the argument of the Court, he may decide that the objection is well founded or that it is not well founded. But I mean, that [fol. 577] happens, as you know from sitting in these trials, lots and lots of times. And that's the reason we are asking you these questions. You say, if the objection was well founded. Well, suppose it wasn't well founded? We lawyers are presumed to know the law, but it seems we make

mistakes on it. The Judge says, "Your objection is not well founded." I mean, then, how would you feel about one of these negro lawyers jumping up and objecting?

A. Well it would still be up to the Judge. Whatever he said. It wouldn't have anything to do with my opinion, white or colored.

Q. You believe that would in no way affect the trial? You say that's up to the Judge?

A. That's right.

Q. Mr. Akerman: The defendant, Walter Irvin, will excuse Mr. Hull. Mr. GORDON B. RICHARDSON, was called to the box and sworn.

By Mr. Hunter:

Q. Mr. Richardson, where do you live?

A. Tavares, out about a mile from Tavares.

Q. How long have you lived here?

A. 39 years.

Q. What business are you in?

A. Citrus work.

Q. Have you ever been informed of the facts and circumstances in connection with this case? Ever heard them discussed?

[fol. 578] A. No sir. I haven't. Except what I saw in the papers.

Q. From what you saw in the papers, did — form or express any opinion as to the guilt or innocence of these defendants?

A. No.

Q. Have you any prejudice against the colored race that would preclude you from forming a fair and impartial verdict in this case?

A. No sir.

Q. Could you give both sides a fair and impartial trial if taken in this case?

A. Yes sir.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

By Mr. Price:

Q. Mr. Richardson, have you read much about this case in the newspapers?

A. No sir.

Q. Heard anything about it over the radio?

A. Well, I heard it. I heard it one time over the radio.

Q. You don't read the daily newspaper's very much?

A. Well, not a whole lot, no. I get the Orlando paper every day.

Q. You didn't read anything about this case in particular?

A. Well, I, that's the paper that I read it in. I read it once in the paper.

Q. Did you form any opinion on the basis of what you heard? Did you come to any conclusion about any of this? [fol. 579] A. No.

Q. Didn't form any opinion. Didn't express one to anybody?

A. No.

Q. Did you discuss this case with any of your friends and neighbors?

A. No. I haven't.

Q. Family?

A. No. I haven't. Not more than just a little talk.

Q. Didn't have any definite conclusions on it, one way or the other?

A. No.

Q. Do you have a family, Mr. Richardson?

A. Yes.

Q. How many?

A. Wife and 2 sons.

Q. Are you acquainted at all, Mr. Richardson, with Norma Padget or with Willie Padget?

A. No.

Q. Do you know any of the Tysons?

A. No.

Q. No anybody much around Bay Lake?

A. No sir.

Q. Are you acquainted at all around Groveland?

A. No. I am not.

Q. Mascotte, over in that area?

A. No.

Q. You have heard this list of State's witnesses, I imag-

ine, that Mr. Akerman read out here several times, earlier. Did you listen to these names and did you recognize any of them as friends of yours?

A. I don't know any of them. I really don't know any of them except Mr. Yates. I know him when I see him.

Q. Know him when you see him around; know he's a deputy sheriff?

A. That's all.

[fol. 580] Q. Just maybe pass the time of day with him. That's all?

A. That's all. Never had a conversation with him.

Q. Do you remember ever seeing any of these three defendants before, sir?

A. No sir.

Q. You have already told me that you are not acquainted at all around Groveland?

A. No sir.

Q. Have you ever been on a jury in a criminal case before?

A. Yes sir.

Q. All right, sir. You are probably familiar then, with the legal premise of a presumption of innocence of the defendants in this case?

A. Yes sir.

Q. In other words, that presumption is that a defendant in a criminal case is presumed to be innocent until and unless sufficient evidence of his guilt has been introduced to show beyond a reasonable doubt that he is guilty of the offense with which he has been charged?

A. That's right.

Q. That's the presumption with which he is clothed from the time the trial begins right on through until enough evidence has been presented to convince you in your own mind that there is not a reasonable doubt at all, but that he is guilty?

A. Yes.

Q. Are you willing to give these defendants the benefit of that presumption?

A. I am.

Q. In other words, right now, at this time, you are willing to presume that these three defendants are innocent of this crime?

A. That's right.

[fol. 581] Q. And that you will continue to presume that

they are innocent until or unless the State brings in enough evidence to convince you that they are guilty, absolutely?

A. That's right.

Q. And you are willing to disregard what you have heard about this case or anything that you have read about it?

A. Yes sir.

Q. Anything you happen to have read in the newspaper, radio or anywhere else; anything anybody says. You are willing to come in here and sit down with a fair and open mind and, just on the basis of the evidence as presented to you, to make your decision?

A. That's right.

Q. All right. And you are willing to, if there is any reasonable doubt in your mind at all, of the guilt of these defendants, that you are willing to give them the benefit of that doubt?

A. That's right.

Q. And if you are of one conclusion in the jury and as many as all 11 of the other jurors have come to the other conclusion, that you have come to a definite conclusion, yourself, as to the innocence or the guilt of these defendants, are you willing to let whatever verdict comes out in this case be your verdict?

A. I would stick to my own verdict.

Q. You will stick to your own opinion?

A. Yes sir.

[fol. 582] Q. All right. We have a situation here, Mr. Richardson, of having two negro attorneys as counsel in this case for the defense. Now, will that affect in any way your feelings?

A. No. No, it won't affect me.

Q. In other words, it won't affect you at all to hear these two negroes cross examine witnesses or make objections to certain things that prosecution will have to say?

A. No.

Mr. Akerman: The defendant, Walter Irving, will excuse Mr. Cannon, Mr. Richardson, and Mr. Reaves.

The Court: Gentlemen of the tentative jury, members of the defense counsel, State counsel, evidently we can't finish the jury this afternoon. Now you gentlemen who have been through the jury box, challenged and refused, you don't have to return. You jurors who have not yet

been called to the box are to return in the morning as well as the gentlemen who are tentatively in the box. We are going to recess until tomorrow morning at 9:30.

Now you gentlemen who are in the jury box, tentative jurors, do not discuss this case among yourselves or with anyone else, or allow anyone to discuss it with you. Be in the jury box tomorrow morning at 9:30.

(The Court then recessed until 9:30 AM, September 2nd 1949, at which time, the following proceedings were had:)

[fol. 583] (The Court opened at 9:30 AM. and a special panel of jurymen was called and qualified on voir dire.

Mr. Akerman: If the court please, the defendants challenge the special panel that has been summonsed on yesterday and ask that their challenge heretofore filed for the regular panel be considered a challenge for these with the amendment to show the proper date of summoning and the appearance of two negroes on the panel.

The Court: Let the record show that the motion to quash the panel as filed against the regular panel be brought to apply to the present one with the necessary amendments.

Let the record also show that the motion is denied.

Are you satisfied with that same list of jurors that were there yesterday?

Mr. Akerman: Yes sir.

Mr. PHILIP AIRY, Mr. FRED LOUIS WOLF, Mr. PEARL GENTRY, were called to the box and sworn.

By Mr. Hunter:

The Court: Let the record show that the defendants are present in Court.

Q. Mr. Airy, where do you live?

A. Mt. Verde.

[fol. 584] Q. What is your business or profession?

A. U. S. Rubber Company.

Q. Do you have any conscientious scruples against the infliction of capital punishment in cases where the law authorizes?

A. No.

Q. Who is the next juror that was called?—Mr. Wolfe.
Where do you live?

A. Clermont.

Q. What business are you in, Mr. Wolfe.

A. Building Supplies.

Q. Do you have any conscientious scruples against the infliction of capital punishment?

Aq. No sir.

Mr. Hunter: Now is this the first panel?

The Court: Yes.

Q. Mr. Gentry, where do you live?

A. Okahumka.

Q. What do you do, Mr. Gentry?

A. Mechanic.

Q. Do you have any conscientious scruples against the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: We tender the jury.

By Mr. Akerman:

Q. Mr. Airy, you say you live down at Mt. Verde?

A. That's right.

Q. Have you heard or read anything concerning this case?

[fol. 585] A. Yes.

Q. Read newspaper accounts of it?

A. Yes.

Q. What papers, please sir?

A. Sentinal and the Clermont paper.

Q. Did you hear any discussion of this case?

A. Yes.

Q. From what you heard or read, have you formed any opinion in this case?

A. That's hard to say.

Q. Have you expressed—

A. I don't know that I have formed any opinion that would be held over after listening to the testimony.

Q. Well did you form any opinion as to the guilt or innocence of the accused from what you have read or heard?

A. Yes sir.

Q. Did you express it? To anybody?

A. Just among my own personal friends, not publicly.

Q. And you were here yesterday when we were questioning the jurors, then?

A. Yes sir.

Q. Understand that I am not trying to find out from you what your opinion is, either guilt or innocence, you don't have to answer that. And we are not trying to inquire about that, sir. When we start asking you about the nature of the opinion, I want you to understand that's not what we are seeking. You say you read the Orlando Morning Sentinel?

A. That's right.

[fol. 586] Q. Any other newspapers?

A. Clermont.

Q. Clermont paper?

A. That's right.

Q. Then you have heard the matter discussed and you have discussed it?

A. That's right.

Q. And from what you heard and read, you have formed an opinion and expressed that opinion among your personal friends and groups that you were talking to?

A. That's right.

Q. Now, do you feel that, in view of the fact that you have discussed the matter, you have read of it, that you have formed or expressed an opinion as to the guilt or innocence of the defendants; that, if accepted on this jury, wouldn't that opinion still be with you at the present time?

A. I don't know. I don't believe it would have too much bearing.

Q. But at the present moment, you still have the opinion that you formed after reading this. Is that correct?

A. I'm afraid I have.

Q. And that would require some evidence to make you change your opinion?

A. I might add that I formed my opinion not from reading the papers but from discussing with people that I know.

Q. And it would require some evidence to remove that opinion wouldn't it?

A. Yes.

[fol. 587] Mr. Akerman: Defense challenges Mr. Airy for cause.

The Court: Don't think you have quite arrived at that point, Mr. Akerman.

Mr. Akerman: He stated it would require evidence to remove the opinion.

By Mr. Hunter:

Mr. Airy, could you put aside whatever opinion you formed—with draw that question.—This opinion that you formed, is simply from neighborhood talk and rumor, was it not?

A. I wouldn't call it neighborhood. It's conversations with men in Clermont that I know and from neighbors, yes.

Q. Those people were not under oath?

A. No.

Q. Could you entirely lay that aside and try this case solely on the sworn testimony that you hear in this case?

A. I believe I could.

Q. Well, can you?

A. I can try.

Q. Well, that isn't the question. Can you do it?

A. I can't answer that.

The Court: I think the challenge is good.

Mr. C. A. RUTLEDGE was called to the box and sworn.

By Mr. Hunter:

Q. What is your name?

A. C. A. Rutledge.

[fol. 588] Q. Where do you live?

A. I live about 4 or 5 miles from Groveland and Polk City. South edge of Lake county, about halfway between Groveland and Polk City.

Q. Are you in the Groveland precinct?

A. Yes, sir.

Mr. Hunter: This gentleman comes under the stipulation. Your Honor.

The Court: All right. Come down, Mr. Rutledge.

Mr. C. C. HOLLY was called to the box and sworn.

By Mr. Hunter:

Q. The State will excuse Mr. Holly.

The Court: All right, Mr. Holly. Come down.

Mr. E. I. BURLEIGH was called.

The Court: Mr. E. I. Burleigh is excused because he was called as a witness in the case for the State.

Mr. WILLIAM ADAIRE was called to the box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. William Adaire.

Q. Where do you live?

A. I live in Eustis.

Q. How long have you lived there, Mr. Adaire?

A. 3½ years.

Q. Where are you from, originally?

A. Michigan.

[fol. 589] Q. What is your business?

A. Painter.

Q. Have you heard the facts and circumstances in connection with this case discussed?

A. I have heard some facts. I don't know whether they were all or not.

Q. Did you read about it in the newspapers?

A. Yes sir.

Q. From what you heard and read, did you form or express an opinion as to the guilt or innocence of the defendant?

A. Yes.

Q. You still have that opinion?

A. I have.

Mr. Hunter: I think you had just as well excuse him, Your Honor.

The Court: All right.

Mr. JOHN W. JONES was called to the box and sworn.

By Mr. Hunter:

Q. Mr. Jones, where do you live?

A. Paisley.

Q. How long have you lived at Paisley?

A. 5 years, the last time.

Q. What business are you in?

A. Block layer.

Q. Did you hear any of the facts or circumstances relative to the guilt or innocence of these defendants discussed?

A. No sir.

Q. Did you read anything about it in the newspapers?

A. Yes sir.

[fol. 590] Q. What papers?

A. Eustis papers.

Q. Where is Paisley? Located in this county.

A. That's in the northeast part of the county.

Q. From what you read in the newspapers did you form or express any opinion as to the guilt or innocence of these defendants?

A. No sir.

Q. Do you feel that you could try this case fairly and squarely between the State of Florida and the defendants?

A. Yes sir.

Q. Are you opposed to capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Wolfe, you live in Clermont?

A. Yes sir.

Q. Have you heard or read anything concerning the facts and circumstances of this case?

A. I read no evidence about the case.

Q. Did you read the newspaper stories?

A. I read stories about the incident.

Q. Did you hear any discussion concerning the incident?

A. About what was in the papers.

Q. Did you hear any discussion from anybody who purported to know the facts in the case?

A. No.

[fol. 591] Q. You heard the list of witnesses called. Did you hear any of them discussing it?

A. No.

Q. Didn't hear Sam Dotto down there in Clermont, discussing it?

A. No sir.

Q. Or anyone purporting to have talked to any of the witnesses in the case?

A. No.

Q. How long have you lived in Clermont, Mr. Wolfe?

A. 3½ years.

Q. What is your business down there?

A. Building materials.

Q. Do you have a family, sir?

A. Yes.

Q. What does your family consist of, please, sir?

A. Wife and three children.

Q. What age are your children?

A. 16, 10, and 6.

Q. Girls or boys?

A. Two girls and one boy.

Q. Are you acquainted over in Groveland area?

A. Slightly.

Q. Do you know Mrs. Norma Padget or her husband, Mr. Willie Padget?

A. No.

Q. Do you know the Tyson family down there in the Bay Lake area?

A. No.

Q. And from what discussion, little discussion you heard and read in the papers, you didn't form any opinion as to the guilt?

A. I haven't read or heard any of the evidence to form an opinion on, so I do not have any.

[fol. 592] Q. You feel that you can give just as fair and impartial trial now as if you had never heard anything about it at all before you came in the courtroom, today?

A. Yes.

Q. You served on juries before, haven't you, sir?

A. No.

Q. In a trial, the evidence of course, comes from the witnesses on the witness stand. Then, at the conclusion of

the trial, why Judge Futch will instruct you as to the law in the case. It is my belief of the law to be and I firmly believe that Judge Futch will instruct you that merely because a person is arrested, charged with a crime, and brought to trial for the crime, is no evidence of their guilt. Do you have any trouble applying that rule of law?

A. I will follow the Judge's instructions.

Q. And when he instructs you that they are presumed to be innocent?

A. I'll follow that.

Q. Every instruction that the Judge gives you, you will follow and apply it to the facts?

A. To the best of my ability.

Q. And it would be your duty to decide what the true facts are, yourself, and then apply the law to those facts and that is what you will do?

A. That's right.

Q. Now, two of the defense counsel are negro attorneys. Would that in any way affect you in the trial of this case?

A. They are not on trial, are they?

[fol. 593] Q. But, they are defending. Are defense counsel and will participate in the case. That wouldn't affect your deliberations at all in this case?

A. Well, as I understand it, I am supposed to listen to the evidence, so they have nothing to do with the evidence that I hear. I mean their appearance has nothing to do with that.

Q. Mr. Gentry, you live at Okahumka, sir?

A. Yes sir.

Q. How long have you lived there, sir?

A. 26 years.

Q. Are you fairly well acquainted down in the Groveland area?

A. No sir. I am not.

Q. What did you say your business was?

A. Mechanic.

Q. You don't know any of these witnesses whose names were called?—

A. No sir.

Q. You don't know the Tyson family down in Bay Lake?

A. No sir.

Q. Have you heard or read in the newspaper anything concerning this?

A. I have read it.

Q. You haven't heard anybody that's supposed to know the facts in the case discussing it, have you?

A. No sir.

Q. From what you read in the newspaper, did you arrive at any opinion as to the guilt or innocence?

A. No, I haven't.

[fol. 594] Q. And you feel, Mr. Gentry, that you can come in, today, and give these three defendants just as fair and impartial trial as if you had never seen anything in a newspaper and have no trouble dismissing it from your mind and taking the evidence as it comes from the witness stand?

A. That's right.

Q. You served on juries before, haven't you?

A. No sir. I haven't.

Q. Judge Futch instructs you that merely because Charles Greenlee, Samuel Shepherd and Walter Irvin, have been arrested, charged with crime and brought here to trial, that that is no evidence of their guilt, you wouldn't have any trouble following that instruction at all, will you?

A. No sir.

Q. And instructs you that they are presumed to be innocent until and unless the State, by evidence, proves their guilt beyond a reasonable doubt, you will have no trouble applying that instruction?

A. No sir.

Q. And you feel that, at the present time, Charles Greenlee, Samuel Shepherd, and Walter Irvin, are presumed to be innocent?

A. That's right.

Q. And you will sit there and see what evidence comes in?

A. Yes.

Q. And, at the end, at the conclusion of all of it, if you believe then they are innocent, you will, or even, though it might be your belief of their guilt, if there is still a reasonable doubt in your mind arising from either the evidence that's introduced or the lack of it, you will vote to acquit them, won't you, sir?

A. Yes sir.

[fol. 595] Q. And, having arrived at that opinion, after hearing all the evidence, why, you will abide by it, and that will be regardless of how the other jurors feel, whether they agree with you or whether they don't agree with you.

A. —

Q. Do you have a family, sir?

A. Yes sir.

Q. What does it consist of?

A. Two children. A girl and a boy.

Q. Mr. Jones, you said that the only thing you had read about this case was in the Eustis paper?

A. The Eustis Lake Region is the only paper I take.

Q. And you didn't pay much attention to that, did you, Mr. Jones?

A. Well, I just read the paper, all the time.

Q. Just like you would read any other, only it didn't make any particular impression on you?

A. No sir.

Q. From what you read, did you form any opinion as to their guilt or innocence?

A. No sir.

Q. Are you acquainted down in the Groveland area, Mr. Jones?

A. No sir.

Q. And you don't know any of these witnesses we have called out?

A. No sir.

Q. You haven't heard anything discussed in this case that was claimed to be the true facts, have you?

A. No sir.

Q. And you have heard the other questions as to the fact that negro attorneys are participating in this case. Does that in any way prejudice you or affect you in this [fol. 596] trial?

A. No sir.

Q. And the fact that the defendants are negroes, you would try them just like you would try a white person, wouldn't you?

A. Yes sir.

Q. And if there is not sufficient evidence introduced you will vote to acquit them?

A. Yes sir.

Q. And, having, at the conclusion of all the evidence and having arrived at the decision either that they are innocent or that although you might believe them to be guilty, you don't think the evidence is sufficient to convince you beyond a reasonable doubt you will vote to acquit them, won't you, sir?

A. Yes sir.

Q. And having arrived at that conclusion, you will stand by it regardless of whether the 11 other members of the jury agree with you or disagree?

A. Right.

Q. Do you have a family?

A. Have a wife and one child.

Q. Daughter or son?

A. Boy.

(Conference of counsel out of hearing of the Reporter.)

By Mr. Akerman:

Q. Mr. Wolfe, are you any relation to Claude Wolfe, in Orlando?

A. Yes.

[fol. 597] Q. Are you any relation to his brother in St. Augustine?

A. He is one; O. D. is another; W. H. is another; W. M. is another. P. E. is another.

Mr. Akerman: The defendant, Walter Irvin, will excuse Mr. Gentry.

Mr. ANGUS COWLE, was called to the jury box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. Angus Cowle.

Q. You live in Eustis, don't you, Mr. Cowle?

A. Yes sir.

Q. How long have you lived there?

A. About 36 years.

Q. What is your business?

A. Cabinet maker.

Q. What is your native state?

A. Ohio.

Q. Have you heard any of the facts and circumstances in connection with this case discussed?

A. Nothing except what I have read in the paper. I read the Orlando Sentinel and the Eustis Lake Region.

Q. From what you read, did you form or express any opinions as to the guilt or innocence of the defendants in this case?

A. No. No definite opinion because I had no way of knowing whether the paper was stating the facts or not.

Q. Would you have any difficulty in hearing the testimony in this case and arriving at a verdict fairly upon the testimony which you hear from the witness stand?

A. No sir.

[fol. 598] Q. Are you opposed to capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Have you any prejudice against the colored race that would in any way affect you in this case?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Cowle, you say you read the Orlando Morning Sentinel?

A. Yes sir.

Q. You say you didn't arrive at any opinion because you didn't know whether they knew anything about the facts or not. Is that correct?

A. Well, I don't think anyone should form an opinion on what they read in the newspapers.

Q. And you believe that if accepted on this jury that you can dismiss what you have read from your mind and be the same fair, impartial juror you would have been if the first you had ever heard of this case was when you walked in this morning?

A. Yes sir.

Q. You say you lived over in Eustis about 26 years?

A. 36.

Q. Do you have a family, sir?

A. Yes sir.

Q. What does your family consist of?

A. Wife and two daughters.

Q. Have you served on juries before, sir?

A. Yes.

Q. You are familiar with the instructions that the Court gives you?

A. Yes sir.

[fol. 599] Q. And you believe then that at the present moment, Charles Greenlee, Samuel Shepherd and Walter Irvin are presumed to be innocent of this crime?

A. That's right.

Q. And you will give them that presumption all through the trial?

A. I will.

Q. And, at the conclusion of the trial, if, even though you might believe them to be guilty, if from the evidence that's introduced or from the lack of sufficient evidence being introduced you feel that they are guilty but the guilt has not been proven beyond a reasonable doubt and you will resolve that doubt in their favor and vote to acquit them?

A. That's right.

Q. You heard the questions concerning the fact that there are negro counsel in this case?

A. Yes.

Q. Will that in any way affect or prejudice you in the trial of this case?

A. No sir.

Q. You feel like that if they participate in it, they should participate just like any other defense counsel and you would judge them by the same standard of conduct that you will judge the rest of the lawyers here?

A. That's right.

Q. You heard the list of the witnesses read off?

A. Yes sir.

Q. Do you know any of them?

A. The only one that I know is the deputy sheriff and I am not very well acquainted with him.

[fol. 600] A. (Continued) I know him when I see him. That's all. The rest of them I don't know.

Q. You don't know the Tyson family down in the Bay Lake area?

A. No sir.

Mr. Akerman: The defendant, Walter Iryin, will excuse Mr. Wolfe.

Mr. LLOYD BROWN, was called to the box and sworn.

By Mr. Hunter:

Q. Where do you live, Mr. Brown?

A. I live over south of Leesburg.

Q. What is your business?

A. I am in the oil business out in Texas.

Q. What is your business?

A. Oil business. Out in Texas.

Q. How long have you lived in Leesburg?

A. Since about '42. Off and on. I haven't been in Leesburg for the last 3 years.

Q. Where are you from?

A. Texas.

Q. Are you conscientiously opposed to capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Have you heard any of the facts and circumstances in this case discussed?

A. Yes, I have.

Q. By talking with people who purported to know, or, just from talk?

A. Well one of the witnesses, I heard quite a bit of discussion on the street about it.

[fol. 601] Q. Beg your pardon?

A. I had a discussion with one of the witness-- and talked to him.

Q. From that discussion, did you form or express any opinion in this case?

A. Well, naturally, I would.

Q. You still have that opinion?

A. Yes sir.

Q. Would not yield readily then to testimony here?

A. Well, I could.

Q. Sir?

A. I could.

Q. Could you disregard what you have heard about this case, and try it solely on the evidence in the trial?

A. I'll try.

Q. Sir?

A. I think so.

Q. Well do you know whether you could or not?

A. Well, I would.

Q. Sir?

A. I think so.

Q. That still doesn't answer my question.

A. Well, I would say, yes.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. You say you have talked to one of the witnesses in this case?

A. Yes. (Indicated by head.)

Q. And naturally, after talking to him, and the others, naturally, you came to an opinion in the case?

A. Well, I heard it discussed so much.

Q. You heard it discussed so much, and it would only [fol. 602] be natural for you, who had done that, to arrive at some opinion?

A. That's right.

Q. And you would take some evidence to change that opinion, wouldn't it?

A. That's right.

Q. You have an opinion?

A. That's right.

Q. And before you would change your opinion about it, why, you would have to have something to show you to the contrary?

A. That's right.

Q. Did you express this opinion to anybody?

A. No.

Q. Do you feel that, having heard the facts discussed, having arrived at an opinion, that you could be just as impartial as if you had never heard anything concerning it?

A. Well, course, that would all be in the evidence in the case.

Q. It might well be that something that you had heard that you believe to be a fact that the case might not ever come out in this evidence.

A. That's right.

Q. That, of course, you would still retain, wouldn't you?

A. I might change my mind.

Q. But if you had heard something about it, supposed to come from the witness that knows something about it, and it is not brought out in the trial of this case, why, either, I mean, either denying or affirming it, that you would still have that evidence in your mind? I mean, still have that discussion in your mind, there.

A. That's right.

Q. It would be kind of hard just to completely dismiss that wouldn't it?

A. That's right.

[fol. 603] Q. And if you feel that there would have to be some evidence introduced that would make you change?

A. That's right.

Q. And if, just the mere failure to introduce any evidence along that particular point, you would still retain that memory of that conversation?

A. Yes.

Q. And would of course retain the opinion of the guilt or innocence?

A. That's right.

Mr. Akerman: Defense challenges for cause.

The Court: Sustained.

MR. T. G. BENNETT was called to the box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. T. G. Bennett.

Q. Where do you live?

A. Eustis.

Q. What business are you in?

A. Groceries and meat.

Q. Are you conscientiously opposed to capital punishment in cases where the law authorizes it?

A. No sir.

Q. Do you know anything about the facts and circumstances in this case?

A. No, I don't.

Q. Have you ever heard it discussed as to the guilt or innocence of these particular defendants?

A. No, I haven't.

Q. Did you read anything about it?

A. Yes.

Q. In the newspapers?

A. Yes sir.

[fol. 604] Q. Did you form or express any opinion as to the guilt or innocence from what you read in the newspapers?

A. Yes sir.

Q. Still have that opinion?

A. Yes sir.

Q. You mean that you read the newspapers and decided one way or the other, that these men were guilty or innocent?

A. Yes sir.

Q. Without ever hearing the evidence?

A. Yes sir.

Q. And you still have that opinion?

A. Yes sir.

Mr. Hunter: I think the grocery business needs this gentleman pretty bad.

The Court: You can go back to your grocery store.

MR. DONALD S. HASELTON, was called to the box and sworn.

By Mr. Hunter:

Q. State your name, sir?

A. Donald S. Haselton.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Mr. Hunter: Your Honor, the State will excuse Mr. Haselton.

MR. C. D. PURSER, was called to the box and sworn.

By Mr. Hunter:

[fol. 605] Q. What is your name, sir?

A. C. D. Purser.

Q. Where do you live?

A. Leesburg.

Q. What is your business?

A. I am retired.

Q. You don't to any work?

A. 2 days a month.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Do you have any family?

A. I have got 6 girls and one boy.

Q. Have you heard any of the facts or circumstances in connection with these three defendants?

A. No sir.

Q. Did you read anything about those cases?

A. Yes, sir. In the papers.

Q. Do you remember anything about what you read?

A. Well, so much in there I can't remember all of it.

Q. Didn't pay much attention to it, did you?

A. I paid attention to it in the Florida Times Union.

Q. Read it in the news items one day and the next day you couldn't tell what you read? Did you form or express any opinion as to guilt or innocence of the defendants by what you read?

A. No sir. I didn't have no evidence.

Q. Do you have any prejudice against the colored race that would interfere with you in the trial of this case?

A. No sir.

Q. Do you know any reason why you couldn't sit as a fair and impartial juror?

A. I believe I could.

[fol. 606] A. (Continued) I am over 65.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. You say you live in Leesburg?

A. Yes sir.

Q. How long have you lived there?

A. I moved there in '25.

Q. You say you have now reached the position where you don't have to work but 2 days a month?

A. Social Security.

Q. Were you engaged in business in Lake County?

A. I was manager of a store over there.

Q. What kind of a store?

A. Purcer's Store. Now Kestner's.

Q. Are you acquainted down in the Groveland area?

A. I have been in Groveland, yes sir. I have been in Groveland.

Q. Know quite a number of people down there?

A. I know some of them in a business way.

Q. Do you know Norma Padget or her husband, Willie Padget?

A. No sir.

Q. Did you ever know any of the Tyson family down in the Bay Lake area?

A. No sir.

Q. Did you hear us read the list of these witnesses?

A. Yes sir.

Q. Do you know any of them?

A. No sir. I don't know them.

Q. You stated that you read in the Times Union?

A. Yes sir. And also on the radio.

[fol. 607] Q. How about the Orlando papers? A. Do you take those?

A. Never read them.

Q. You have served before, haven't you, sir?

A. Sure.

Q. You are familiar with the instructions that the Court gives you?

A. Hope so.

Q. And then you believe at the present moment that Charles Greenlee, Samuel Shepherd and Walter Irvin are presumed to be innocent of this crime?

A. Yes sir. That's right.

Q. If accepted on the jury, you will listen to the evidence, and at the conclusion of the evidence, if you believe they are innocent or even that they might be guilty in your opinion or belief, if there is any reasonable doubt in your mind of that guilt you will resolve that doubt in their favor and vote to acquit them?

A. I think I will.

Q. Pardon me?

A. I think I know all about that.

Q. And you will, once you make up your opinion from the evidence, of their guilt or innocence, why, you are going to abide by it?

A. Yes sir.

Mr. Akerman: The defendant, Walter Irvin, will excuse Mr. Purcer.

MR. JOSEPH H. BASSETT, was called to the box and sworn.

By Mr. Hunter:

Q. Mr. Bassett, where do you live?

A. Eustis.

Q. What is your business?

A. Boat business.

[fol. 608] Q. How long have you lived in Eustis?

A. 35 years.

Q. Are you conscientiously opposed to the infliction of capital punishment?

A. No sir.

Q. Have you ever heard any of the facts or circumstances in relation to the guilt or innocence of these three defendants or either one of them discussed?

A. Yes sir.

Q. You have heard the facts and circumstances discussed?

A. Yes sir.

Q. Did you form or express an opinion?

A. Yes sir.

Q. As to their guilt or innocence?

A. Yes sir.

Q. You still have that opinion?

A. Yes sir.

The Court: All right, Come down.

MR. MARION WINGFIELD, was called to the box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. Marion Wingfield.

Q. Where do you live, Mr. Wingfield?

A. Well, I get my mail and sleep in Umatilla. I live in Eustis.

Q. Are you related to the Wingfields at Umatilla?

A. Yes sir.

Q. Related to the County Judge of Volusia County?

A. Yes sir.

[fol. 609] Q. How long have you been up there, Mr. Wingfield?

A. 20 years.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No.

Q. Have you ever heard any of the facts and circumstances in connection with this case discussed?

A. Yes. What I have read in the papers.

Q. Did you ever hear any person that purported to know the facts discuss them?

A. No sir.

Q. You read about it in the papers?

A. Yes.

Q. Most of the articles you read in the newspapers were directed at the crime, itself, rather than the three defendants here, were they not?

A. I think so.

Q. Did you form or express any opinion as to the guilt or innocence of these three defendants or either one of them from what you read?

A. Yes.

Q. You did?

A. Yes.

Q. You still have that opinion?

A. Yes.

Mr. Hunter: OK. Your Honor, he should go back home.
The Court: All right, Mr. Wingfield.

Mr. R. GILBERT AULT was called to the box and sworn.

By Mr. Hunter:

[fol. 610] Q. What is your name?

A. R. Gilbert Ault.

Q. Where do you live?

A. Leesburg.

Q. What is your business?

A. Banking.

Q. How long have you been over there?

A. About 27 years.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Have you ever heard any of the facts or circumstances relating to the guilt or innocence of these defendants discussed?

A. Very little.

Q. Did you ever read anything about them in the newspapers?

A. I read some in the Orlando Sentinel and Leesburg Commercial.

Q. Most of the stuff that you read in the—I mean, the news that you read in the Orlando papers purportedly directed at these defendants, or at the general news of what they claimed was going on down there?

A. Just general news.

Q. Did you form or express any opinion as to the guilt or innocence of these defendants from what you heard or read?

A. No.

Q. I believe you said you were not opposed to capital punishment?

A. That's right.

Q. Are you opposed to or prejudiced against the negro race?

A. No sir.

[fol. 611] Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. You say you are in the banking business?

A. Yes sir.

Q. Do you have a family, sir?

A. No sir.

Q. Do you know any of these witnesses' names we have called out?

A. I know three of them. Curtis Howard, and the deputies, Yates and Campbell.

Q. What is the nature of your acquaintanceship with Mr. Howard?

A. I have just known him about 3 years in business connections.

Q. The fact that you know Mr. Howard and do not know some of the other witnesses, would you tend to give more or less credence to what Mr. Howard might say from the

witness stand than you would from somebody you didn't know?

A. No. I don't believe I would.

Q. There would be no embarrassment on your part at all in arriving at your verdict if you sincerely thought that the other witnesses were testifying to the truth and Mr. Howard was mistaken? You would have no embarrassment in returning a verdict?

A. No embarrassment.

Q. You have served on juries before?

A. Yes sir.

[fol. 612] Q. Then you are familiar with the instructions of the law that the Court gives you?

A. Yes sir.

Q. And then you believe at this time that there is a presumption that Charles Greenlee and Samuel Shepherd and Walter Irvin, are innocent of this crime?

A. There is a presumption, yes sir.

Q. There is a presumption?

A. Yes sir.

Q. And you will give them the benefit of that presumption throughout this trial?

A. Yes sir.

Q. And if at the conclusion of all the evidence even though you may believe they are guilty, but there is a reasonable doubt in your mind that they have been proven guilty of the crime. Will you resolve that doubt in their favor and vote to acquit them?

A. Well, there might be something that I didn't exactly understand.

Q. I mean by that—

A. The discussion might change my view on it.

Q. If you finally arrive at the conclusion that although it might be your opinion the preponderance of the evidence might show their guilt, but still there was a reasonable doubt, not a doubt now—but, a reasonable doubt, that a reasonable man would have as to their guilt, that if you had to choose between a 50-50 one way or the other, but still there is a doubt there in your mind, you would resolve that doubt in their favor, wouldn't you?

A. Yes sir.

[fol. 613] Q. Let me ask one general question. Are any

of you represented by Mr. Hunter, as your attorney? Or have you been represented by him?

(Answer was indicated in the negative.)

Mr. Akerman: The defendant, Walter Irvin, will excuse Mr. Cowle.

Mr. HENRY G. GATCH was called to the box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. Gatch.

Q. Where do you live?

A. Eustis. About 5 miles East of Eustis.

Q. How long have you been there?

A. About 15 years.

Q. Do you have a family?

A. Yes sir.

Q. What constitutes the family?

A. Wife and 4 boys.

Q. What business are you in?

A. Fruit business.

Q. Do you have any conscientious scruples against the infliction of capital punishment where the law authorizes it?

A. No sir.

Q. Have you ever heard the facts or circumstances in relation to the guilt or innocence of these three defendants, here, discussed?

A. No sir.

Q. Have you read anything about it?

A. A little.

Q. From what you heard or read, did you form or express any opinion as to their guilt or innocence?

A. No sir.

[fol. 614] Q. Have you any prejudice against the colored race?

A. No sir.

Q. If taken as a juror would you give both sides a fair and impartial trial?

A. Yes sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Gatch, you say you read a little bit about it?

A. That's right.

Q. And you feel that if taken on this jury you will have no trouble dismissing from your mind what you have read about it and come in just like you never heard anything before about the case?

A. I was on a vacation, I think, when it happened.

Q. You say you are in the fruit business, sir?

A. Yes sir.

Q. You have served on juries before, haven't you?

A. Yes sir.

Q. You are familiar with the instructions that the Court gives you?

A. Yes.

Q. Never had any trouble following those instructions?

A. No sir.

Q. And you believe now, then, that Charles Greenlee, Samuel Shepherd, and Walter Irvin, are presumed to be innocent of this crime?

A. Yes sir.

[fol. 615] Q. And you will continue to give them that presumption unless the State brings in evidence proving to you beyond a reasonable doubt of their guilt?

A. That's right.

Q. Are you acquainted down in Groveland?

A. No sir.

Q. Don't know the Tyson family down there?

A. No sir.

Q. Mrs. Padgett or her husband, Mr. Willie Padgett?

A. No sir.

Q. Do you know anything about the three defendants over there, or their families?

A. No sir.

Q. Don't know of any reason why you couldn't serve on this jury and render a fair and impartial trial?

A. That's right.

Q. Have you ever been represented by Mr. Hunter as an attorney?

A. Not yet, no sir.

Mr. Akerman: May we have a short conference, Your Honor?

The Court: Yes sir.

(The Court then took a five minute recess, at the end of which time, the following proceedings were had:)

Mr. Akerman: The defendant, Walter Irvin, will excuse Mr. Crutchfield.

[fol. 616] Mr. R. M. HOLLOWAY was called to the box and sworn.

By Mr. Hunter:

Q. Where do you live, Mr. Holloway?

A. Leesburg.

Q. What is your business?

A. Citrus.

Q. How long have you lived over there?

A. 20 years.

Q. Are you opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Have you heard any of the facts or circumstances relating to the guilt or innocence of these defendants?

A. No sir. I wasn't in town at the time.

Q. Have you read any of the newspaper articles in reference to their guilt or innocence?

A. The only newspaper I read was in Rochester, Minnesota. I saw it in that paper. That's the only paper I have seen.

Q. From what you read in that paper or for any other reason, have you formed or expressed any opinion as to the guilt or innocence of these defendants?

A. I didn't.

Q. At the present time, do you have any other opinion than what's cast upon them by law?

A. No.

Q. Do you have any prejudice against the colored race that would affect you in the trial of this case?

A. No sir.

Mr. Hunter: You may inquire.

By Mr. Akerman:

[fol. 617] Q. Mr. Holloway, you say you are in the citrus business?

A. Yes sir.

Q. Do you have a family, sir?

A. Yes sir.

Q. What does your family consist of?

A. Wife, boy and girl.

Q. You have lived in Leesburg how long, sir?

A. Approximately 20 years.

Q. You say you were out of the State at the time of this occurrence?

A. Yes sir.

Q. Did you hear us read the list of the witnesses, Mr. Holloway?

A. Yes sir.

Q. And do you know any of them, sir?

A. I know Mr. Camp, the deputy sheriff.

Q. What is the nature of your acquaintanceship with him?

A. Nothing except I just know him as an officer.

Q. And your knowledge of him would not, the fact that you know of him, would not tend to give his testimony more or less credence than any other?

A. No sir.

Q. Mr. Hunter asked you the question that you have no other opinion than that cast by the law. That being that, at the present time, there is a presumption that Charles Greenlee, Samuel Shepherd, and Walter Irvin, are innocent of this crime?

A. Yes sir.

Q. And that's your feeling in the matter right at the present moment?

A. Yes sir.

[fol. 618] Q. The fact that negro attorneys are participating in this trial, would not affect you in any way?

A. Not a bit.

Q. Now I want to ask just a few general questions to each one of you gentlemen. As you gentlemen well realize, this is a serious case.

Mr. Hunter: Mr. Akerman, is that the final question you want to ask?

Mr. Akerman: I am asking a few general questions of all the jurors.

Mr. Hunter: Well, we may want to challenge one or two of them and you probably will want to make that, later.

Mr. Akerman: Well understood—What says the State?
Mr. Hunter: We will excuse Mr. Bishop.

Mr. J. S. BISPHAM was called to the stand and sworn.

By Mr. Hunter:

Q. Where do you live, sir?

A. Lake Yale, near Leesburg.

Q. How long have you lived out there?

A. 5 years.

Q. You heard any of the facts and circumstances in connection with this case?

A. No sir. I have not.

Q. Have you read anything about it?

A. Yes sir. I have read a little bit about it in the papers.

[fol. 619] Q. Are you related to any of the attorneys in this case?

A. Yes sir.

Mr. Hunter: I expect Mr. Bispham had better step down. He and I are related to each other.

The Court: Let the record show he was discharged for cause.

Mr. BURTON BROWN was called.

Mr. Hunter: The State will excuse Mr. Brown.

Next name I call is that of L. P. Fusell, who was sick and not able to attend.

Mr. JOHN HENRY WADE was called; excused by permission of counsel for defense.

Mr. Hunter: He was a colored man?

The Court: Yes.

Mr. Akerman: Excused because of a death in the family.

Mr. ARTHUR ALEXANDER was called to the box and sworn.

By Mr. Hunter:

Q. Where do you live, sir?

A. Mascotte.

Mr. Hunter: Well, you can just go right on back.

[fol. 620] Mr. J. A. McCranie was called to the box and sworn.

By Mr. Hunter:

Q. Where are you from, Mr. McCranie?

A. Leesburg.

Q. What is your business?

A. Hardware.

Q. Are you related to the old McCranie family in Marion County and the North half of Lake County?

A. No sir. Not that I know of.

Q. Where are you from?

A. South Georgia. Sparks. Sparks County.

Q. Have you ever heard any of the facts or circumstances in reference to the guilt or innocence of these three defendants?

A. Yes sir.

Q. From what you heard, have you formed or expressed an opinion as to their guilt or innocence?

A. Yes sir.

Q. Do you still have it?

A. Yes sir.

Mr. Hunter: Excuse him, Your Honor.

The Court: Excused for cause.

Mr. R. N. DILLARD was called to the box and sworn.

By Mr. Hunter:

Q. What is your name, sir?

A. R. N. Dillard.

Q. Where do you live, Mr. Dillard?

A. Eustis. Between Eustis and Umatilla.

[fol. 621] Q. What is your business?

A. Carpenter.

Q. Have you heard any of the facts or circumstances in reference to the guilt or innocence of these defendants?

A. No sir.

Q. Have you read anything about that case?

A. Yes sir.

Q. From what you read, did you form or express any opinion as to their guilt or innocence?

A. No sir.

Q. Are you opposed to capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Are you in any way prejudiced against the colored race to such an extent that it would interfere with you in rendering the verdict in this case?

A. No sir.

Q. If taken as a juror, will you give both sides a fair and impartial trial?

A. I will.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Dillard, do you have a family, sir?

A. Yes sir.

Q. What does that consist of?

A. Consists of one boy, now.

Q. You have lived in Lake County all your life?

A. No sir.

[fol. 622] Q. You say you haven't heard any discussion of the case; all you have done is read something in the newspapers concerning it?

A. Yes sir.

Q. What papers, please, sir?

A. The Tampa Tribune and St. Petersburg Independent. I was in Bay Pines when this happened, in the hospital.

Q. And from what you read, you didn't form any opinion as to the guilt or innocence?

A. No sir.

Q. Do you believe that if you serve as a juror in this case, that you can readily lay aside what you may have read and base your decision solely upon what you heard from the witness stand in this courtroom?

A. Yes sir.

Q. The fact that what you have read will in no way embarrass you in the trial of this case?

A. Not a bit.

Q. Are you acquainted down in the Groveland section?

A. No sir.

Q. You heard us read the list of the names of the witnesses down in this case, do you know any of them, sir?

A. No sir.

Q. The fact that colored attorneys are participating in this case would make no difference to you, would it, sir?

A. Not a bit in the world.

Q. And you have served as a juror in Lake County, before?

A. No sir.

[fol. 623] Q. This is your first jury experience. You heard, in qualifying the other jurors, the questions that have been asked concerning the law of our land here, haven't you?

A. Yes sir.

Q. Then you feel that at the present time, there is a presumption that Charles Greenlee, Samuel Shepherd and Walter Irvin, 3 seated right over there, are innocent of this crime?

A. Until proven guilty.

Q. That's right. No evidence having come in now, you feel that at the present time, they are innocent of the crime?

A. That's right.

Q. And you will give them the benefit of that presumption all the way through the trial?

A. Yes sir.

Q. And unless and until there is evidence produced proving their guilt beyond a reasonable doubt you will vote to acquit them?

A. That's right.

Q. And having arrived at your decision after hearing all the evidence and considering it, the law given you by the Judge, you will remain by that decision?

A. I will.

Q. Regardless of what the other members of the jury may be, with you or against you?

A. That's right.

Mr. Akerman: What says the State?

By Mr. Hunter:

— Mr. Baer, how long did you say you had been in this County?

A. 5 years.

[fol. 624] Q. And where did you come from?

A. Ohio.

Q. What was your business in Ohio?

A. Dry cleaning.

Q. And are you in any business, now?

A. No sir.

Q. Retired?

A. Retired.

Q. Are you living on a farm?

A. On an estate.

Q. Gentlemen, I want to ask you one question that I might not have asked each of you. And this is the question: Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

(Answer was indicated in the negative.)

(At this point, the Court took a 5 minute recess after which the following proceedings were had:)

Mr. Hunter: State will excuse Mr. Rast, Mr. Ault, Mr. Baer.

Mr. T. GRADY SIMPSON, was called.

W. A. L. BOOTH was called.

Mr. Hunter: He's from Mascotte.

The Court: Mr. Booth excused as being from the Mascotte area.

Mr. JOHN ARNOLD was called.

By the Court:

— Are you from Groveland?

A. Mascotte.

The Court: Mr. Arnold is excused for the same reason.

[fol. 625] Mr. WILBUR T. ADAMS and Mr. WILLIAM PRINS were called.

(All new men in the box were sworn.)

By Mr. Hunter:

Q. Mr. Prins, you are in the sand business, and your business is shut down, isn't it?

A. Yes. (Indicated by head.)

Mr. Hunter: I promised to excuse him on behalf of the State.

The Court: All right. Mr. Prins is excused.

Mr. ALTO M. ROYAL was called and sworn.

By Mr. Hunter:

Q. Mr. Adams, where do you live?

A. Lady Lake.

Q. How long have you lived up there, Mr. Adams?

A. All my life. A little over 40 years.

Q. What is your business or profession?

A. In the citrus and also real estate.

Q. Have you heard any of the facts or circumstances in relation to the guilt or innocence of these three defendants discussed?

A. What I have read in the papers.

Q. From what you have read in the papers, did you form or express any opinion as to their guilt or innocence?

A. No sir.

Q. Are you conscientiously opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Do you know of any reason why you could not sit as a fair and impartial juror in this case?

A. No sir.

Q. Do you have any prejudice against the colored race that would influence you in the trial of the case?

A. No sir.

[fol. 626] Q. Mr. Simpson, where do you live?

A. Mt. Dora.

Q. How long have you lived there?

A. Since '24.

Q. What business are you in?

A. Tourist and citrus.

Q. Have you heard any of the facts or circumstances in relation to the guilt or innocence of these defendants discussed?

A. No sir.

Q. Have you read any newspaper reports in reference to it?

A. Yes.

Q. From what you read, did you form or express any opinion as to their guilt or innocence?

A. No sir.

Q. Do you have any prejudice against the colored race?

A. No sir.

Q. Are you opposed to the infliction of capital punishment in those cases where the law authorizes it?

A. No sir.

Q. Mr. Royal, where do you live?

A. Cassidy.

Q. What is your business?

A. Farmer.

Q. Have you heard any of the facts or circumstances in connection with this case in reference to the guilt or innocence of these defendants discussed?

A. No sir.

Q. Did you read anything about it in the newspapers?

A. Yes sir.

Q. Did you form or express any opinion from what you read in the newspapers, sir?

A. No, I haven't.

Q. Are you prejudiced against the colored race?

A. No.

[fol. 627] Q. Do you know of any reason why you couldn't sit as a fair and impartial juror in this case?

A. No, I don't.

Mr. Hunter: You may inquire.

By Mr. Akerman:

Q. Mr. Adams, you live at Lady Lake, sir?

A. Yes sir.

Q. You say you have lived there about 40 years?

A. Yes sir.

Q. Do you have a family, sir?

A. Yes sir.

Q. Of what does your family consist?

A. Wife and one child. Boy.

Q. Did you hear the list of the witnesses read?

A. Yes sir.

Q. Do you know any of the witnesses in this case?

A. There are two of them. One of them is the deputy and the other is the young man, Curtis Howard. I know them just casually, you know. I haven't done any business with them.

Q. Never have done any business with either of them?

A. No.

Q. How long have you known Mr. Howard?

A. About 3 or 4 years. Something like that.

Q. And you stated you hadn't heard any of the facts discussed in this case?

A. Only what you can read in the papers.

[fol. 628] Q. I mean, no discussion of it. You have read the papers concerning the case?

A. That's right.

Q. What papers do you recall having read about it?

A. Well, the Orlando Sentinel, Tampa Tribune, the Leesburg Commercial.

Q. Are you a subscriber to each one of those papers?

A. Yes sir.

Q. Do you get them daily?

A. Yes sir.

Q. Did you read the stories fairly thoroughly that appeared in them?

A. Yes.

Q. And from those stories, did you arrive at an opinion, either as to the guilt or innocence?

A. No.

Q. Now it may well be in the trial of this case that some of the things that were in the papers may never come out in this trial.

A. That's true.

Q. With that in mind, do you think that you will have a memory of certain things that the papers said were supposed to be true?

A. No. Because a lot of things you read in the paper is just hearsay.

Q. So you think you will have no trouble dismissing what you have read in the paper from your mind?

A. That's right.

Q. And that you can make a fair and impartial juror as you would have made if the first thing you had heard of this case was when you sat down over there a few minutes ago?

A. Yes sir.

[fol. 629] Q. Have you ever served on a jury before, sir?

A. Yes sir.

Q. You are familiar with the instructions that the Court gives you?

A. Yes sir.

Q. That the mere fact that a person is arrested and charged with a crime and brought to trial is no evidence of their guilt?

A. That's right.

Q. And they are presumed to be innocent?

A. Until proven guilty.

Q. That's right. And so then at the present time there is a presumption of innocence which you agree, that Charles Greenlee, Samuel Shepherd, and Walter Irvin are, as a presumption, that they are now innocent of the crime?

A. That's right.

Q. And you will give them the benefit of that presumption?

A. That's right.

Q. And you will give them the benefit of that presumption? All the way through the trial and unless the State proves to you by evidence from the witness stand of their guilt beyond a reasonable doubt, then you will vote to acquit them?

A. That's right.

Q. And if at the conclusion of all the evidence, while though it might be your impression that they are guilty, if from the evidence there is a reasonable doubt in your mind of their guilt,—could you catch that? I mean that it might, things might point towards their guilt but still there is a reasonable doubt in your mind of their guilt, you would [fol. 630] vote to acquit them?

A. Yes. If the evidence showed it.

Q. Or, if they fail to bring in the evidence or, the lack of the evidence?

A. That's right.

Q. And, having once arrived at the conclusion from the evidence, the instructions by the Court and, having once arrived at your sincere opinion in this case, you will abide by that opinion?

A. That's right.

Q. Regardless of whether you are joined by the other members of the jury or not?

A. That's right.

Q. As you see, there are two colored men, two negroes, serving as defense counsel in this case. Maybe in the trial of this case, in their participation in their duties as defense counsel that they will have to cross examine the witnesses, most of the witnesses being white. What effect, if any, would it have on you of a vigorous cross examination by one of the colored counsel of a white witness?

A. None, whatever. Only it does seem rather odd.

Q. Well now, can you kind of explain your feeling on that, Mr. Adams?

A. Well, we are used to white people mostly, as lawyers, especially. And it does seem rather strange to sit with colored lawyers.

Q. Now, you said it is strange. Do you mean it is kind of unique?

A. It is just a little different, so to speak.

Q. What effect, if any, will that difference have on you?

A. None, whatever.

[fol. 631] Q. In other words, you will judge them, your judgment of them will be by the same standard that you are going to judge Mr. Hunter, Mr. Buoy, and myself and the other counsel here in the case?

A. That's right.

Q. And if, in the course of the trial, as you no doubt have experienced as a juror, you know that questions are asked and by one attorney and the other lawyer gets up and objects to the questions and then it is argued before the Court. What effect, if any, would that have on you, if Mr. Hunter was asking the questions and one of the colored counsel jumped up to place an objection? Do you think that would be perfectly proper? In other words, you would judge them just like you would judge us? Or, vice versa, if I was asking a question and Mr. Hunter objected to it?

A. Yes sir.

Q. Mr. Simpson, you live in Mt. Dora?

A. I do.

Q. You are in the citrus and tourist business?

A. Yes sir.

Q. How long have you lived over in Mt. Dora?

A. Since '24.

Q. Do you have a family, sir?

A. I do. Wife and three children.

Q. I believe you stated you had read something about the case, but hadn't heard anybody discussing the facts?

A. No facts. Haven't heard anyone say anything of any facts.

Q. You have heard discussion concerning the case but not anybody purporting to know what the facts are?

A. No. I haven't been in any discussions.

[fol. 632] Q. No discussions?

A. That's right.

Q. What papers did you read?

A. The Orlando Sentinel and Mt. Dora Topic.

Q. And from what you read, did you form any opinion as to the guilt or innocence of the accused?

A. No sir.

Q. Do you feel that, as may well be in this case, that certain statements were made in the press which will not be introduced in evidence, do you feel that you can dismiss those statements you saw in the papers from your mind?

A. Yes.

Q. And in no way feel like, 'wonder why the paper said so-and-so,' and that it wasn't brought out here in the courtroom?

A. I don't believe them, anyway. The papers.

Q. I think we can move on to other questions, then. Forget the papers. Are you acquainted down in the Groveland area?

A. No, I am not.

Q. Did you hear the list of witnesses read?

A. Yes.

Q. Do you know any of them, sir?

A. No, I don't.

Q. Before this occurrence, you didn't know anything about the three defendants over there?

A. No.

Q. Don't know anything about their families; reputation of the families?

A. No.

Q. Have you served on juries before, sir?

A. Yes.

Q. And then you are familiar with the general rules of [fol. 633] law that the Court gives you?

A. Yes.

Q. Then you believe that at the present time, there is a presumption of innocence for Charles Greenlee, Samuel Shepherd and Walter Irvin?

A. They are.

Q. And that presumption you will give the benefit of throughout this entire trial and require the State to prove their guilt beyond any reasonable doubt before you would render a verdict of guilty?

A. That's right.

Q. And even though you might believe of a probability of their guilt, unless you were convinced beyond a reasonable doubt, you would never vote for a verdict of guilty, would you?

A. That's right. It would have to be proved guilty.

Q. Beyond any reasonable doubt?

A. That's right.

Q. And once having arrived at a conclusion of their innocence, you would abide by that regardless of whether the other 11 gentleman here joined with you or not?

A. That's right.

Q. You have heard the questions concerning the colored defense lawyers?

A. Yes.

Q. Do you have any comments to make on that?

A. No, I haven't.

Q. You would just judge them by the same course and standard of conduct that you judge the other attorneys?

A. That's right.

Q. And if, during the trial, they had to jump up and object to evidence, vigorously cross examine witnesses, why, it would have no effect on you at all?

A. No.

[fol. 634] Q. Mr. Royal, where did you say you lived?

A. Cassia.

Q. Did you hear any discussion concerning this case?

A. No.

Q. You did read something in the papers about it?

A. Yes sir.

Q. What papers did you read, sir?

A. Orlando.

Q. Orlando papers?

A. Yes.

Q. And, from what you read, did you form any opinion as to the guilt or innocence?

A. No.

Q. Then it may well be in the trial of this case that certain things that were stated in the papers will never be brought out as evidence, will it?

A. Yes.

Q. Will you have any trouble dismissing those things from your mind?

A. No sir.

Q. Do you think that you would be just as fair and impartial as if you had never heard of this case until this day?

A. That's right.

Q. Do you have a family, sir?

A. No.

Q. Have you served on juries before, sir?

A. Yes sir.

Q. Are you familiar with the general instructions of law that the Judge gives?

A. Yes sir.

Q. Then do you feel at the present time that there is a presumption that Charles Greenlee, Samuel Shepherd and Walter Irvin are innocent of this crime?

A. Yes.

[fol. 635] Q. You would give them the benefit of that presumption not only right now but all through this trial?

A. Yes.

Q. And unless and until the State brings in evidence that will convince you beyond a reasonable doubt of their guilt, then you will of course vote for a verdict of not guilty?

A. Yes.

Q. And having arrived at your sincere opinion in the case, you will abide by it, will you not?

A. Yes.

Q. Regardless of whether the other 11 gentlemen join with you or differ with you?

A. Yes.

Q. I ask all of you three gentlemen that have just been called, and any others I haven't asked the question, are any of you now, or have you been represented by any of the counsel for the State, Mr. Hunter, or his firm?

(Answer indicated in the negative.)

Q. You say you have, sir?

A. (Mr. Royal) I have been.

Q. How long ago?

A. 3 years.

Q. About 3 years ago. That case is not pending now?

A. No, sir.

Q. All through and clear?

A. Yes.

Q. Was it just a representation in one matter or something extending over a long period of time?

A. No. About 2 years.

Q. For about 2 years, he acted as your attorney?

A. Yes. (Indicated by head.)

[fol. 636] Q. Now, Mr. Royal, of course, in the trial of the case, your final instructions as to the law will come from Judge Futch. But it is proper for attorneys on both sides to express their opinion of the law to the jury. And it may be in this case, that in our arguments to the jury, we may discuss with you what we believe the law to be. As I say, the final authority is the Judge and of course, I know you will follow his instructions on it. But would the fact that you were represented by Mr. Walton Hunter naturally, he gave advice in your matters, and you accepted his advice because he was your lawyer, would the fact that you had been represented by him and had been advised as to the law by Mr. Hunter, would that tend for you to give more weight to what Mr. Walton Hunter said the law was than what I said it would be?

A. No.

Mr. Akerman: What says the State?

By Mr. Hunter:

Q. Mr. Royal, you would take the law from Judge Futch, wouldn't you?

A. Sure.

Mr. Hunter: The State tenders the jury.

By Mr. Akerman:

Q. Gentlemen, I am going to ask you just a few general questions directed to the whole panel. As you know, this is a very serious case. It is a capital case. Lives are at stake. We have attempted on our questions to question [fol. 637] you about what we considered material matters going toward your qualifications as jurors. We didn't attempt to go thoroughly into all of your affairs, drag it out. So, I am not going to attempt to, at this time. But I am going to ask each one of you gentlemen before accepting the jury, do you know of any reason, even though our questions might not have come anywhere near there, any reason why you can't serve on this case; be a fair and impartial jury and discharge your duties as such?

Rather than attempting to ask a lot of questions, I am going to ask that general question knowing that any of you who do would certainly speak up and say so.

(No answer.)

Q. Do you know any reasons, Mr. Jones? You sir?

(All answers were indicated in the negative.)

Q. You feel that each and every one of you will give a fair and impartial trial in the case? (Answer indicated in the affirmative.)

Mr. Akerman: Defense accepts the jury.

Mr. Hunter: Swear the jury.

(Whereupon, the jury was sworn, polled by the Court and the names recorded by the Clerk)

Mr. Hunter: Now, Your Honor, I would like to ask that all State witnesses come to this courtroom at 1 o'clock, promptly, and I am going to ask the Court to adjourn until 2 o'clock when we will be ready to proceed.

[fol. 638] The Court: Is that satisfactory to you, Mr. Akerman?

Mr. Akerman: Yes sir. We would like to have all witnesses placed under the rule from now on out.

The Court: Well, as soon as they are called to Court. At two o'clock, we will.

Now, gentlemen of the jury, up to this stage, you haven't been under any restraint or anything else. But from now

on, until the case is completed and you have brought in your final decision, you will be kept together and in charge of one or more bailiffs that the sheriff's office will furnish. They will look after your needs and comforts, anything that you want in reason, why, make it known to your bailiff and he, in turn, will make it known to the Court and, if it is necessary. But you will be in charge of the bailiff or bailiffs whom the sheriff will appoint and will remain together at all times until this case is concluded.

Mr. Sheriff, —

Mr. Buoy: I suggest that you discharge all the other jurors.

The Court: Now you jurors who have not been called in this case will be excused for the term and Mr. Dykes will [fols. 639-840] meet you at his office downstairs at 1 o'clock.

The Court will now recess until 2 o'clock.

(The Court then adjourned until 2 o'clock, PM, September 2nd, 1949; at which time, Court was reopened and the following proceedings were had.)

[fols. 841-842] IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY.

STATE OF FLORIDA

VS.

SAMUEL SHEPPARD, WALTER L. IRVIN AND CHARLES GREENLEE

Transcript of Testimony and Proceedings on Motion of Defendants to Withdraw Pleas of Not Guilty and to Set Aside Arraignment.

[fol. 843] At a hearing on motion of defendants to withdraw the pleas of not guilty and to set aside arraignment, before Hon. Truman G. Futch, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Lake County, in the court room at Tavares, Florida, on the 25th day of August 1949, the following proceedings were had:

By J. W. Hunter. Let the record show that the State is represented by State Attorney, J. W. Hunter, and A.

P. Buie, Assistant State Attorney, and I would like to have W. B. Hunter sworn as Assistant State Attorney for this whole trial. W. B. Hunter sworn by Geo. J. Dykes, Clerk of the Circuit Court, as Assistant State Attorney.

By Alex Akerman Jr. I am appearing as counsel for the defendants, and Joseph Evans Price, of Orlando, Florida, is appearing as counsel for the defendants, and at this time I would like to ask permission of the Court for Franklin H. Williams, a member of the bar of the State of New York, to appear as counsel in this case.

Mr. Hunter. No objection.

The Court. The request is granted.

Mr. Akerman. I would like at this time to have filed motion of defendants to withdraw pleas of not guilty and to set aside arraignment.

Motion read to the Court by Mr. Akerman.

Mr. Hunter. In reply to that I have filed the following paper which I will ask the Court also to file.

Answer read to the Court by Mr. Hunter.

Mr. Hunter. If it is necessary to swear to this document let the record show it is sworn to before the Court.

The Court. I don't think it is necessary.

[fol. 844] ALEX AKERMAN JR., being first duly sworn, testified as follows:

My name is Alex Akerman Jr. I am a member of the bar of the State of Florida, with offices in Orlando, Florida. I was employed as counsel in this case the night of August 22nd, 1949. Shortly before August 12, 1949, I was contacted with reference to employment in the case. On the 11th or 12th I phoned Mr. Hunter, the State Attorney, concerning the arraignment. My memory is not clear whether he said they had just been arraigned or were going to be arraigned at that time. I explained to him at that time that I was not employed in the case. I explained to him what steps, of which there have been quite a number, asking me to act as defense counsel, and that I did not desire to act as defense counsel in this cause, and would only do so in the event it became apparent that no other attorney in the State would represent said defendants, and would exhaust every legal remedy available under the law for

their defense. I have not since my employment had the opportunity to inquire into the summoning, empaneling and qualification or disqualification of the grand jury by which this indictment was returned. If I am to properly represent these defendants I consider it my duty to make a complete and thorough investigation into all of the matters and thus discharge my duty without having to file hasty and dilatory motions which may or may not be proven. That is all.

◦ Cross-examination.

By Mr. Hunter:

Q. Mr. Akerman I believe you stated that you call me with reference to this case; do you remember whether it was on the 11th or 12th that you called me?

A. Mr. Hunter I am not absolutely sure whether it was just before or after the arraignment. I believe it was a [fol. 845] couple of hours before arraignment. What I recall particularly, it was with reference to the arraignment.

Q. You do remember then that it was before the arraignment?

A. That is my recollection, that it was an hour or so before arraignment. It might have been afterwards. I was not retained in the case at that time.

Q. Do you remember my telling you that the arraignment had been set for the 12th and that if private counsel did not appear the court would appoint an attorney to represent these defendants?

A. You either told me that or you told me one had been appointed. I am not sure.

Q. Do you remember my telling you that these defendants and the State were entitled to a trial of this case without unnecessary delay?

A. Yes.

Q. Do you remember telling me that if you were finally retained that you would be busy in court work until the 22nd of August, and asked me not to set the case prior to that time?

A. My memory is—it may not be correct—that you said the case would not be set for two weeks from the date of the phone call.

Q. Don't you remember that you stated that you would be busy prior to that time, and asked that the case be set for a date after the 22nd of August?

A. I do not recall. I do recall the "two weeks" being mentioned.

Q. You wouldn't say whether you did that or not?

A. I could not say one way or the other.

[fol. 846] Q. Do you recall further saying that any time after the 22nd, if you were retained, would be satisfactory to you?

A. No I don't recall that.

Q. Would you say you didn't do it?

A. No I couldn't say that. At that time I was not retained in the case. I was merely asking about the arraignment. It didn't make any correct impression on me. Your memory would be probably better than mine.

FRANKLIN H. WILLIAMS, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Akerman:

Q. State your name?

A. Franklin H. Williams.

Q. Your residence?

A. 2235 Fifth Avenue, New York City, New York.

Q. Are you a member of the bar of any court in the United States?

A. I am a member of the bar of the State of New York, and the Southern District of the Federal Court, and a member of the bar of several Circuit Courts, and the Supreme Court.

Q. Are you admitted to practice in the State of Florida?

A. I am not.

Q. Do you recall when you first saw the defendants in this case?

A. July 31, 1949.

Q. Did they make a request of you?

A. Yes, sir. They did.

Q. What was their request?

A. That I continue my investigation of their case and

[fol. 847] if in my opinion their statements that they were innocent were true I would obtain competent counsel to defend them.

Q. Did you act upon this request?

A. I did.

Q. State to the court what efforts were made, and the time consumed by the efforts in obtaining a member of the bar of the State of Florida to represent them?

A. I believe my answer would be more complete to begin with July 31st, and a few days prior thereto. With this permission I will go ahead. I am employed by the National Association for the Advancement of Colored People, Legal Defense Funds, Educational Funds, Inc., a New York Corporation. I was sent down here by Chief Counsel, Thurgood Marshall, to investigate the facts and circumstances surrounding the recent race rioting at Groveland, Florida, and to ascertain to the best of my ability whether the three negroes who were charged with having committed rape according to the Associated Press reports were innocent or guilty. I was sent here because prior to that time we had made numerous efforts by telephone to obtain a report from some competent person in the State of Florida as to the true facts in this case. Mr. Marshall had contacted a Mr. L. C. Thomas, an attorney in Miami, I believe, and had requested that he seek to locate these three defendants and obtain statements from them and send them to New York City. This was not done because at that time the Associated Press report stated that these men were being held at an undisclosed place. This news was given to Attorney Thomas on or about July 25th. Prior to that time I had been informed that Mr. Harry T. Moore, as Secretary of the NAACP in the State of Florida, had requested a young attorney of some three months experience before the bar of this State, located in Tampa, [fol. 848] Florida, by the name of William Fordham, to make similar efforts and obtain sworn statements from these boys. Up to and including the 27th day of July we had not received any such statement, and it was for this reason that I was dispatched to Florida. I arrived in the State on the 29th or 30th, I am not definite which day, and was successful in obtaining several sworn affidavits, both from these defendants and some other persons who had some information concerning the circumstances surround-

ing their detention. I returned to the City of New York a few days later, to the best of my recollection on or about the 2nd or 3rd day of August, and reported my findings to my chief counsel. Subsequently we attempted by telephone, after we had considered the statements contained in these affidavits and concluded there was reasonable doubt as to the innocence or guilt of these defendants, and that in our opinion, as attorneys, they were absolutely innocent of the crime with which they were charged, according to the press. We contacted some time subsequent to that Attorney Alex Akerman Jr. by telephone, and he informed us that he did not desire to defend these men. Accordingly I was again sent to Florida for the specific purpose of enlisting the legal assistance for the defense of these boys of a competent member of the bar of this state. I arrived here on the 17th day of August, and from that day until the night of the 22nd day of August I have been contacting and personally talking to a large number of the members of the bar of this state in various parts of the state with the request that they act as defense counsel for these three defendants. I contacted approximately eleven such attorneys, all of whom are competent and qualified, and of the eleven only two stated that they would be willing to act in such capacity. One requested a retainer of \$10,000.00, and another a retainer of \$25,000.00. I informed these men that the defendants and their families were paupers and could not pay such retainer; that they were entirely dependent upon charity to obtain funds to pay defense counsel. The other attorneys stated that they considered the case of such a nature that in their opinion it would be harmful to them to act as defense counsel, and several after examining statements and other information which I had obtained, expressing an opinion concerning the innocence of these defendants, steadfastly refused to act in such capacity. On the evening of August 22nd, this year, at approximately five P.M. I went to the office of Alex Akerman Jr., and from five until approximately eight-thirty I explained to him in great detail the efforts I had expended in trying to obtain defense counsel, and I pleaded with him to act in such capacity for these boys. With great reluctance Mr. Akerman agreed to do so, and is presently acting in such capacity.

Q. In your statement you mentioned contacting Attorney L. E. Thomas in Miami in connection with this case, and attempting to locate the prisoners and attempting to learn of the arraignment, did you receive a reply from him?

A. Yes I did.

Q. I will ask you if this is the reply?

A. Yes it is, or a copy thereof. I believe it is the original.

Q. It was sent to you by Western Union?

A. Yes, sir. It was sent to us by Western Union and signed by Attorney L. E. Thomas.

Mr. Akerman. We offer this telegram in evidence.

Mr. Hunter. No objection.

The Court. The telegram, datelined Miami, Florida, [fol. 850] addressed to Attorney Franklin H. Williams, 20 West 40th Street, and purporting to be signed by Attorney L. E. Thomas, offered in evidence, and received in evidence without objection, as Defendants' Exhibit #1.

Q. From your preliminary examination of the case is there a question in your mind that it *it* is properly investigated that certain facts and law will reveal that for the adequate defense in this case certain motions should be made, such as a motion to quash the indictment, and motion for change of venue?

A. I have such very definite opinion.

Q. Has it been explained to you that under the Florida law a motion for change of venue requires certain affidavits by at least two citizens of the county?

A. Yes, sir, and that it is also supposed to be made prior to arraignment.

Q. Have efforts been made to secure this information?

A. They have.

Q. Have refusals been obtained and on what grounds?

A. Several efforts have been made to secure such information, which efforts have been met by refusal on the ground that the parties requested were residents of this county; and both frightened and afraid to sign such affidavits.

Q. Are efforts being made today to ascertain that information?

A. They are.

Q. Are efforts being made to inquire into the forming and impaneling of the grand jury?

A. They are.

Q. Did you discuss with Mr. Harry E. Gaylord, the attorney appointed by the court, the question of filing motion [fol. 851] to quash, and motion for change of venue?

A. I did, in great detail, and in addition I requested Mr. Gaylord, or inquired of Mr. Gaylord whether or not he would be willing to act as retained counsel in this case.

Q. Did he state he would not?

A. He did so state.

Q. And would not file a motion for change of venue?

A. He did so state, and he further informed me that at the time he appeared in court as the appointed attorney for the defendants at the arraignment—

Mr. Hunter. I object to him stating anything that was said by Mr. Gaylord as being hearsay testimony.

The Court. The objection is sustained.

Cross-examination.

By J. W. Hunter, State Attorney:

Q. You came to this state on the 31st day of July?

A. Yes, sir.

Q. And began your investigation?

A. Yes, sir.

Q. You came because you couldn't find out anything about what had taken place down here?

A. That is true.

Q. Did you ever contact the Sheriff's office?

A. I did not.

Q. Did you ever contact the State Attorney's office?

A. I did not.

Q. Did you know an indictment had been found against these defendants on the 20th day of July, ten days before you came here?

A. Not until I arrived and got a back issue of the Orlando paper.

[fol. 852] Q. You didn't make any effort to secure a copy of the indictment?

A. I did not.

Q. Did you ever contact the State Attorney for information about this case?

A. I did not.

Q. Did you know that J. W. Hunter, State Attorney, had

told a lawyer in Tampa by the name of Fordham that he would be glad to give him any information he had about this case?

A. I did not know that.

Q. Did you know that an attorney in Miami, I believe his name is Thomas, had been told by the State Attorney that he would be glad to give him any information he desired with reference to this case?

A. I did not.

Q. Did you undertake to determine who the witnesses were against these defendants?

A. I did not directly, no, sir.

Q. Did you make any request from the State Attorney for the witnesses in this case?

A. I did not. I was not retained as counsel for the defense and did not think I had a right to make such request.

Q. You had been sent here as attorney for this association, whatever its name is, to make an investigation had you not?

A. Yes, sir.

Q. And you didn't think you had the right to ask the State Attorney for the witnesses or a copy of the indictment?

A. That is true.

Q. Or any other information?

A. That is right.

[fol. 853] Q. Are you retained by this association to represent them?

A. No, sir. I am a salaried employee of the Legal Defense Fund. I was sent here to obtain information and locate the defendants and find out if in my opinion they were innocent or guilty.

Q. In doing that did you go to the source where you might have found this information?

A. In my opinion I did.

Q. Didn't you think you could get that information from the State Attorney?

A. I certainly did not.

Q. Did you have any reason to think the State Attorney would refuse to give you a copy of the indictment and the names of the witnesses in this case?

A. I had no right to such indictment. I wasn't retained by the defendants.

Q. When were you retained by the defendants?

A. I have never been retained by the defendants.

Q. When was your association retained by the defendants?

A. The association has never been retained by the defendants.

Q. What are you doing about this case then?

A. We were retained at defendants' request to investigate their case and obtain for them adequate counsel. I am in the case because of the charter of our association. We are a New York corporation with powers and the main function of assisting negroes who are innocent of crime, and who have been charged with same, and where in our [fol. 854] opinion they have their rights guaranteed by the United States Constitution violated.

Q. You came here without authority then to go to the public records, or to the State Attorney's office, or the Sheriff's office and obtain any of those things?

A. At the time I came to this state I had no intention of coming in Lake County unannounced.

Q. How did you find where the defendants were?

A. When I got to Orlando I obtained the information from the president of our local branch, whose name is J. F. Ellis. A young attorney, by the name of Fordham, in Tampa had been requested by our State Secretary to obtain their whereabouts. How Fordham found out I don't know. I went to Tampa and talked to him. He told me that a day or so previously he had gone to Raiford but he had not obtained sworn statements. I could place no reliance on those statements. On the 31st, in company with Fordham and a notary public I went to the State Prison and interviewed them and obtained sworn affidavits.

Q. Did you obtain affidavits or evidence other than from the defendants as to their guilt or innocence?

A. I did.

Q. Did you make a thorough investigation as to their guilt or innocence?

A. I did not.

Q. Why didn't you?

A. The purpose for which I was sent here was, first to locate them, to obtain statements from them, and to make other inquiries and obtain sufficient information to enable

my chief counsel to decide whether or not these boys were guilty beyond a reasonable doubt, or whether they were innocent.

Q. You made that investigation for that purpose?
[fol. 855] A. I did.

Q. Did you turn the result of your investigation over to Mr. Akerman?

A. I did on the night he agreed to defend the boys.

Q. That was on the 22nd?

A. Yes, sir.

Q. How long have you been in this investigation?

A. I came down here early on the 29th, I believe, of July.

Q. How many times did you go to Raiford to interview the boys?

A. Once. Sunday, the 31st.

Q. Did you send, or did your association send other persons there to see the defendants?

A. Prior thereto I learned, the night of the 30th, that Fordham had gone up and interviewed them.

Q. Did your association send other persons there except you and Fordham?

A. We attempted to get some one else but were unsuccessful. My office did not even send Fordham. We had no knowledge of the fact that he had gone. I didn't know him.

Q. Did you know that other lawyers, colored lawyers, and stenographers, had been sent from New York to Raiford to interview these men?

A. On the 31st, at the time I spoke to the defendants, I didn't know that, and I do not believe it to be a fact.

Q. You don't believe then that any one else has gone from your association to Raiford to interview these men?

A. Now I know they have. That has been subsequent to the 31st.

Q. Who was that?

[fol. 856] A. Attorney Horace Hill from Daytona Beach, an attorney of some three month's admission to the bar, and a Doctor by the name of Spaulding, of Jacksonville, and a Dentist also from Jacksonville whose name I do not recall.

Q. Did they carry a stenographer with them?

A. I do not know.

Q. Was that information furnished to Mr. Akerman?

A. On the night of the 22nd it was. Prior thereto it had been furnished the FBI.

Q. In the issue of the Pittsburgh Courier of Saturday, August 13th, 1949, appears dissertation from Raiford, Florida, in which it is said that "Assistant Special Counsel Franklin H. Williams of the NAACP announced, on his return from an on-the-spot investigation of violence and race rioting in the Groveland, Fla. area, that the three young men charged with attacking Mrs. Willie Padgett of Groveland have retained the NAACP to handle their defense," is that correct?

A. That is not.

Q. That statement made by the Pittsburgh Courier on the 13th day of August 1949 was untrue was it?

A. Inaccurate would be a better word.

Q. You didn't authorize that statement?

A. Not that we were retained. We were retained not to handle the defense, but we were retained to obtain competent defense counsel to act in the defense and we were to assist them.

Q. Then this paper misquoted you in that case?

A. I would say yes. I never spoke to any one connected with that paper.

Q. I will ask you if this part of their report is correct, as coming from you? "Retainers have been signed by [fol. 857] Samuel Shepherd, Walter Lee Irvin and Charles Greenlee, the prisoners," did you make that statement to them?

A. I certainly did.

Q. That was true?

A. Yes.

Q. I believe you did say that you were convinced that the three young men are entirely innocent of the charge?

A. I did, and I am still so convinced.

Q. At the time you are alleged to have given this interview you had completed your investigation had you?

A. The purpose of my investigation was to obtain information to enable me to decide whether they were innocent or guilty, not information for the defense. I had no way of knowing whether we could assist them or not.

Q. Do you agree that this was correct or incorrect in the same report as coming from you, in the Pittsburgh Courier of Saturday, August 13, 1949: "The NAACP announced that as a result of investigations by its local branches, the State Conference of Branches, and Mr. Williams, they are

convinced that the "trumped-up rape charge," the burning of Negro property, the open participation of the Ku Klux Klan, and the continued intimidation of Negroes in the area is "all a part of one great plot to intimidate the Negroes in the community, to force them to work for little or no wages and to stop them from being so 'uppity'?"

Mr. Akerman. I object to the question on the ground that it is irrelevant and immaterial to the issues in this case.

The Court: The objection is overruled.

A. I stated that and I believe it.

Q. Did you know when you made that statement that the vast majority of the lawabiding colored men in that community, fruit pickers, made from \$15.00 to \$25.00 per day every day they wished to work?

A. I did not.

Q. You didn't know that?

A. No.

Q. You jumped at conclusions?

A. I didn't jump at conclusions.

Mr. Akerman: I object to that line of questions. He is getting away from the issue.

The Court: The objection is overruled.

Q. You still affirm that is a fact?

A. I affirm that is my opinion.

Q. You don't know whether it is a fact or not?

A. It is my opinion.

Mr. Hunter. That is all.

Mr. Akerman. That is our testimony.

J. W. HUNTER, being first duly sworn, testified as follows:

I would like to say that the answer to the motion filed here is true and correct, except that part alleged on information and belief, and I believe those things to be true.

When this matter occurred it went down on my docket as any other case would, with the expectation of trying it on its merits, and it is still my intention to present it in that way. I found that the Association for the Advancement of Colored People had come into this case, and were publishing scandalous and slanderous lies about the whole

situation down here, and as it appeared to me in an effort to create not good feeling among the races, but to create hatred and disharmony among the people in this county. I intend that the case against these boys be presented fairly, [fol. 859] so when I found that an attorney had been employed in Tampa to represent them I called him and told him the court was in session here at that time, and we would like to handle this case as we did all others, get it to issue and try it. This man's name was Fordham. I told him it was my policy in all cases, and it would be especially so in this case, to lay my cards on the table and give him any information which my office had, including the names of the witnesses, or any other information I could give him. I talked to the Superintendent of the State Prison Farm and requested him to permit Fordham to see the men and confer with them as their attorney, which I was informed was done. Fordham made no request of me at all for information, and I came to the conclusion he was getting his information from the scandalous stories being published on the subject in the northern newspapers. He went, I was informed, to Raiford where he was permitted every facility necessary to interview these men. I did request him in my first talk with him to tell me, after he saw the men, when he would prefer to have the arraignment and the case set. I didn't hear anything from him, so on Monday following I called him again, and again made him the same offer to assist him in any way I could to bring this case to trial, and to give him information I had on the subject. I never hide information from opposing counsel. He told me at that time that he couldn't make any commitment because he had to report his findings to the Association for the Advancement of Colored People. I heard no more from him and later I was informed that a man by the name of Thomas had called from Miami to the clerk's office asking about the indictment and the arraignment. This was prior to the arraignment. I called him and made the same statement to him, that he could have any information I had, the names of the witnesses, and anything else. He hadn't [fol. 860] asked for any information from the Clerk, so I was informed, except he wanted to know if arraignment had been had. I would like to say that this telegram from Thomas, or that part of his telegram in which he says

"Prosecutor declines to arraignment delay" is error. I told him these boys were entitled to be confronted with the charge made against them, and I had done everything I could to get some one from the Association, or for them to send somebody here to defend them, and I was not going to delay it any longer, that if no one was here to defend them the court would appoint as able an attorney as we had in this county to defend them. That part of his telegram which says "But will thereafter waive rights against motions on indictment" is absolutely false. I never made any such statement. Why on earth would I want to make a statement that these men would have an arraignment which would be a total farce. I never made that statement to any one.

Mr. Akerman called me either on the 11th or 12th of August and stated to me that he was considering being retained in this case; he didn't know. I told him I was going to arraign the prisoners. He requested me not to set the case for trial until after the 22nd, saying that he would be busy until that time, and that thereafter he would be available for trial. I therefore requested the court to set the case for the 29th.

Now, Your Honor, I want to introduce a carbon copy of the record of this arraignment.

Mr. Akerman. No objection.

Mr. Hunter. I would like to read this testimony in evidence, as follows:

"IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

[fol. 861]

STATE OF FLORIDA

VS.

WALTER L. IRVIN, CHARLES GREENLEE and SAMUEL SHEPPARD

Transcript of Proceedings Had at Arraignment of the
Defendants

At the arraignment of the defendants, Walter L. Irvin, Charles Greenlee and Samuel Sheppard, before Hon. Truman G. Futch, Judge of the above entitled court, in open

court, at Tavares, Lake County, Florida, on the 12th day of August 1949, the following proceedings were had:

Appearances:

J. W. Hunter, State Attorney, representing the State.
Harry E. Gaylord, Representing the defendants.

Mr. Hunter. We are now ready for the arraignment of Samuel Sheppard, Walter L. Irvin and Charles Greenlee. Let the record show that Ernest R. Thomas is now deceased.

The Court. Let the record show that Mr. Harry E. Gaylord has been appointed by the court to defend these defendants.

Mr. Hunter. Will the defendants please stand.

Q. What is your name?

A. Walter L. Irvin.

Q. Are you represented by Mr. Gaylord as your attorney?

A. Yes, sir.

Q. What is your name?

A. Samuel Sheppard sir.

Q. Are you also represented by Mr. Gaylord?

A. Yes, sir.

Q. What is your name?

A. Charles Greenlee.

Q. Are you also represented by Mr. Gaylord?

A. Yes, sir.

[fol. 862] Q. What is your age Samuel Sheppard?

A. Twenty two years.

Q. What is your age Walter L. Irvin?

A. Twenty two years.

Q. What is your age Charles Greenlee?

A. Sixteen years.

Q. Who is your father?

A. Tom Greenlee.

Mr. Hunter: If he is in the court room I would like to have him come down front.

Tom Greenlee came down front.

Mr. Hunter: Swear Tom Greenlee please sir?

Tom Greenlee sworn by the court.

Mr. Hunter: What is your name?

A. Tom Greenlee.

Q. Where do you live?

A. Santafe, Florida.

Q. Are you related to Charles Greenlee?

A. Yes, sir. He is my boy.

Q. He is your son?

A. Yes, sir.

Q. How old is he?

A. He was sixteen last June.

Q. Are you here on his behalf as his father?

A. Yes, sir.

Q. The court prior to coming into the court room appointed Harry E. Gaylord, a member of this bar, to represent your son, is that satisfactory to you?

A. I got a letter from a lawyer saying he was going to defend the boy.

Q. Who was the lawyer?

[fol. 863] A. Fordham.

Mr. Hunter: Let the record show that William A. Fordham of Tampa has made it known to the State Attorney that he will not represent Charles Greenlee, or any of the defendants; that he is not in the case at present, and then the court appointed Mr. Gaylord, is that satisfactory to you? You can hire anybody else later if you want to.

A. I haven't made any arrangements for a lawyer for the boy. I didn't know any.

Q. You can make any arrangement before the trial that you want to. What I am asking you now is it satisfactory that Mr. Gaylord represent your boy simply for this arraignment. I will read the indictment and ask them whether they are guilty or not guilty?

A. Yes sir, it will be alright.

Mr. Hunter: Mr. Gaylord are you ready for the arraignment?

Mr. Gaylord: Yes, sir, I am ready for the arraignment.

Indictment read to the defendants.

Mr. Hunter: What do you say Walter L. Irvin, guilty or not guilty?

Walter L. Irvin: Not guilty.

Q. What do you say Charles Greenlee, guilty or not guilty?

Charles Greenlee: Not guilty.

Q. What do you say Samuel Sheppard, guilty or not guilty?

Samuel Sheppard: Not guilty.

Mr. Hunter: The defendants being arraigned in open court each enters a plea of not guilty.

Mr. Hunter: I would like to ask that the court set this [fol. 864] case for trial, and I can say in behalf of the State that we will be ready by the 29th day of August 1949.

The Court: Is that alright with you Mr. Gaylord?

A. Yes, sir.

The Court: The case is set for trial beginning at ten o'clock A. M. August 29, 1949.

The Court: Is there anything further at the present time?

Mr. Hunter: Nothing further at the present time.

Mr. Hunter: I would like to say that the State will summon any witnesses that counsel for the defendants wish served, by simply giving us the names of the witnesses.

The Court: Give Mr. Gaylord the names of any witnesses you want and the State will have them summoned and have them here on the day of the trial. Give the list of witnesses to Mr. Gaylord so he can present it to the State Attorney. At the request of the State Attorney I ask those persons present in the court room to please retire in an orderly manner before the defendants are taken out by the sheriff and his deputies.

Mr. Gaylord: The defendants desire to have a physical examination by doctors to be appointed by the court of each of the defendants.

Mr. Hunter: The State will not oppose the motion. We sanction it, and join counsel for defendants in making it.

The Court: The motion is granted and I will appoint Dr. C. M. Tyre and Dr. S. C. Colley.

STATE OF FLORIDA,
County of Lake:

I, Jeff Wood, do hereby certify that Walter L. Irvin, Samuel Sheppard and Charles Greenlee, the defendants in the case of State of Florida vs. Walter L. Irvin, Samuel [fol. 865] Sheppard and Charles Greenlee, were arraigned in open court in the court room in the court house at Tavares, Lake County, Florida, on the 12th day of August 1949; that I was authorized to and did report in shorthand

the proceedings had at said arraignment, and that the foregoing pages numbered 1 to 4, inclusive, is a true and correct transcription of my shorthand report of the said proceedings.

In Witness Whereof I have hereunto affixed my hand this the 12th day of August 1949.

Jeff Wood, Court Reporter."

Cross-examination.

By Mr. Akerman:

Q. Mr. Hunter it is my understanding of your testimony that the statement contained in the telegram from Attorney Thomas which has been offered in evidence as Defendants' Exhibit #1, "Will thereafter waive rights against motions on indictment" is a mistake?

A. My best recollection of it is that I don't see why I should have made such statement. All of the defendants were present at the time of arraignment.

Q. Is it the position of the State at this time that a motion to quash the indictment returned in this case would be objectionable because it was not filed prior to the arraignment?

A. It is the position of the State that this case has been handled so far in an orderly and proper manner and I see no reason why the court should now back up and start over again.

Q. You would object to a motion to quash the indictment on the ground that it was not filed prior to arraignment?

[fol. 866] A. I think the law settles that. The question is not necessarily whether there is any objection to it, or whether I agree to it, the law is plain on the subject. All that I am asking is that the case be tried in accordance with the law.

Mr. Akerman: No further questions.

MRS. FLORENCE ROBERTSON, being first duly sworn, testified as follows:

Direct examination.

By J. W. Hunter:

Q. What position do you occupy in Lake County?

A. Deputy Clerk of the Circuit Court.

Q. Do you remember a man by the name of Thomas, a lawyer of Miami, calling you some time recently with reference to the case now before the court?

A. I do.

Q. What did he ask you—in other words tell the court what conversation took place?

A. He said he was an attorney from Miami, named L. E. Thomas, and that he wanted to inquire about the case of the State of Florida vs. Samuel Sheppard, Walter L. Irvin and Charles Greenlee; wanted to know if they had been arraigned and if the indictment had been filed in the Clerk's office. I told him they had not been arraigned but the indictment charging them with rape had been filed.

Q. Did he ask you for a copy of the indictment?

A. He did not.

Q. Did he ask you for any other information?

A. He did not.

Q. You are the deputy who handles correspondence and other matters for Geo. J. Dykes, the Clerk, are you not?
[fol. 867] A. I am.

Mr. Akerman: No questions.

GEORGE J. DYKES, being first duly sworn, testified as follows:

Direct examination.

By J. W. Hunter:

Q. You are Clerk of the Circuit Court in this county?

A. I am.

Q. You are the keeper of the records of the county?

A. I am.

Q. Has any attorney for either of these defendants, Samuel Sheppard, Walter L. Irvin or Charles Greenlee requested any information from you about this case?

A. They have not.

Q. Have they requested any copies of the indictment?

A. They have not.

Cross examination.

By Alex Akerman Jr.:

Q. I believe you testified that no one asked you for a copy of the indictment?

A. That is right.

Q. Only an attorney for the defendants is entitled to a copy of the indictment, is that correct?

A. You are asking me a legal question. I would rather you ask the attorney.

Mr. Akerman: No further questions.

LAWRENCE E. DUGGER, being first duly sworn, testified as follows:

Direct examination.

By J. W. Hunter:

Q. What is your name?

A. Lawrence E. Dugger.

Q. Are you employed by the State of Florida?
[fol. 868] A. Yes, sir. I am.

Q. What is your position?

A. Record Clerk at the Florida State Prison at Raiford.

Q. Do you have any record of any attorneys appearing at the State Prison for the purpose of interviewing these defendants, Charles Greenlee, Walter L. Irvin and Samuel Sheppard?

A. I have a telegram, which I believe has been read before to the court, from William A. Fordham, Attorney at Law, direct to the Superintendent of the State Prison: "I have been retained by the National Association for the Advancement of Colored People in behalf of Samuel Sheppard, Walter Irvin and Charles Greenlee. Please inform as to what hour I may interview the above named on Friday July 30, 1949". This is from William A. Fordham, Attorney at Law, 1404 1/2 Central Avenue the 26th of July 1949.

Q. Was Friday the 30th?

A. Friday was the 29th.

Q. Did Fordham come to the prison?

A. He did.

Q. When?

A. He came to the prison on the 29th I believe is the correct date.

Q. Was he permitted to interview the defendants alone and discuss anything he wanted to with them?

A. These three defendants were brought to the private office and turned over to this attorney to interview for as long period as he wished.

Q. Did any one else to your knowledge appear there to interview these defendants?

A. Not this date.

[fol. 869] Q. Any other date?

A. On or about the 31st day of July we had another negro attorney come to see the men. I am not sure but I believe there were two attorneys, and they did have a stenographer with them.

Q. Do you see either one of the attorneys in the court room?

A. Sitting directly across from me is one of them.

Q. You are pointing to Franklin H. Williams?

A. Yes, sir.

Q. Were they accorded every opportunity to interview these men? Were they alone?

A. They were alone, yes, sir.

Q. Did any one else appear there purporting to represent these defendants?

A. On or about—I am not sure of the date—I believe on the 7th; anyway it was on Sunday, and I believe it was the 7th, we had attorneys—I don't recall their names—to come and interview them. They brought two doctors with them to examine them.

Q. Did they have a stenographer?

A. They had a girl with them, the girl was represented as a nurse. That was the information they furnished me.

Q. Were these colored people?

A. They were.

Q. Were they accorded every opportunity to investigate and examine these defendants?

A. They were. And furthermore we made an Xray for them at that time and turned it over to them.

Q. Did you give them all of the time they needed?

A. We did.

[fol. 870] Q. In other words no effort of any kind was made to cover anything or to hamper them in any way in their investigation?

A. None whatsoever.

Mr. Akerman: No questions.

Mr. Hunter: That is all Your Honor.

Mr. Akerman: At this time the defendants would like to file a motion to quash, with the understanding that same is hastily prepared because of pressure of time, and probably does not include all of the grounds of a motion to quash which may hereafter be filed.

The Court: Let the record show that on yesterday, August 24, 1949, Mr. Harry E. Gaylord, who had been appointed by the court to represent the defendants requested that he be permitted to withdraw from the case, and the request was granted in view of the fact that other counsel had been employed by some one to represent the defendants.

Mr. Akerman: We have no further testimony to offer on this motion.

RULING OF THE COURT

The Court: I want to say first that the allegation contained in paragraph six of the petition, to the effect that the Judge of this Court stated on the day of arraignment that the entering of a plea to the indictment at said arraignment did not waive any rights of which they were possessed prior to such arraignment, and that upon obtaining a retained defense counsel they would have the right to withdraw their pleas and to file and enter any plea or motion with the same force and effect as if said motion or plea had been filed prior to said arraignment, is not true. This court made no such statement and no such statement was made in the [fol. 871] presence in the court.

Considering the allegations in the motion, that they present nothing more than suspicion on the part of counsel for the defendants, nothing positively being alleged to warrant the request, and nothing presented to the court that would justify the granting of the motion at this time, it is

Ordered that the motion be and the same is denied. However I will change the date of trial from Monday, August 29, to Thursday, the 1st day of September 1949, which I think will have given counsel ample time to have prepared

In this case, and if there are any other or further preliminary motions or pleas to be filed they will be required to be filed on or before eleven o'clock A. M. Monday, August 29, 1949.

Mr. Akerman: At this time defendants request a copy of the indictment, a copy of the names and addresses of the jurors summoned as petit jurors in this case, a copy of the minutes of the grand jury returning the indictment, and the privilege of access to the grand and petit jury lists of the county for the past thirty years.

[fols. 872-879] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 880] IN THE SUPREME COURT OF FLORIDA JANUARY TERM, -A. D. 1950

En Banc.

SAMUEL SHEPHERD and WALTER IRVIN, Appellants,

vs.

STATE OF FLORIDA, Appellee

An Appeal from the Circuit Court for Lake County, T. G. Futch, Judge

Alex Akerman, Jr., Joseph E. Price, Jr., and Akerman, Akerman & Price, and Franklin H. Williams (New York, N. Y.) for Appellants Richard W. Ervin, Attorney General and Reeves Bowen, Assistant Attorney General, and J. W. Hunter, for Appellees.

OPINION FILED May 16, 1950

CHAPMAN, J.:

On July 20, 1949, a grand jury of Lake County, Florida presented an indictment in open court against Samuel Shepherd, Walter L. Irvin, Charlie Greenlee and Ernest A. Thomas charging each of them with the crime of rape. It alleged that each of the defendants with force and violence did feloniously ravish and carnally know a named female, then seventeen years of age, on July 16, 1949, in Lake

County, Florida. On August 12, 1949, the defendants (except Ernest A. Thomas) were brought into court, accompanied by their attorney Harry E. Gaylord, and were asked if they were ready for arraignment, and, having answered through counsel in the affirmative, they were duly arraigned and each entered a plea of not guilty to the indictment.

It appears by the record that the three defendants are colored men. When the men were arraigned Samuel Shepherd was 22 years of age, Walter L. Irvin was 22, and [fol. 881] Charlie Greenlee was about 16, but his father was in attendance at the arraignment. Samuel Shepherd and Walter L. Irvin were residing with their parents in the Groveland area, being the southern portion of Lake County, while Charlie Greenlee was working at Gainesville but was visiting with Thomas in the Groveland area of Lake County on the night of July 15, 1949. These men were not able financially to employ counsel and at the time of arraignment were represented by an attorney appointed by the court. Each was arrested within a few hours after the commission of the alleged crime and by an order of the court transferred for safe-keeping from the Lake County Jail to the State Prison at Raiford, but each was returned to Tavares on August 12, 1949. On August 12, 1949, the case was set by the court for trial on August 29, 1949.

A New York attorney, having a connection with a certain fund under the control of the National Association for the Advancement of the colored people, came to Florida and interviewed the defendants at the Raiford Prison and otherwise made an investigation into the guilt of the defendants. He returned to New York from Florida with his report. He came to Florida on the case for the second time for the purpose of employing counsel for the defendants. He interviewed several Florida attorneys prior to obtaining counsel but succeeded on the night of August 22, 1949. On August 24, 1949, the recently retained counsel appeared in court and presented numerous motions. Attorney Gaylord, of the Eustis bar, declined to accept employment in behalf of the defendants but stated in open court if he were by the trial court appointed to represent the defendants he would honestly endeavor to discharge his duty and obligation as an officer of the court. After counsel was obtained by the defendants attorney Gaylord was discharged as counsel by an order of the court.

[foi. 882]. The record discloses that considerable testimony and many exhibits were offered in support of the several motions presented to the Court for the defendants. The time between August 24th and 29th, 1949, was largely consumed in the presentations to the trial court of the evidence in support of the motions, the merits of which will later be considered. The trial court, in light of developments, saw fit to reset the date of trial from August 29, 1949 until September 1, 1949, on which date the defendants were placed upon trial and a verdict of guilty rendered against each defendant, but the jury recommended mercy to Charlie Greenlee and as a result he was given a life sentence, but the death penalty was imposed in the court below as against Samuel Shepherd and Walter L. Irvin. Shepherd and Irvin have perfected their appeal here.

Samuel Shepherd, Walter L. Irvin and Charlie Greenlee, on August 29, 1949, petitioned the trial court for an order removing the cause to another county as provided in Chapter 911, F. S. A. The petition recited fourteen grounds for the removal of the cause. The pertinent reasons set out were: (1) the movants feared mob violence in Lake County; (2) The delay incident to the employment of satisfactory counsel; (3) the time for counsel to investigate and prepare for trial was insufficient; (4) the hostile public sentiment against the movants; (5) a mob gathered at the jail in Tavares and demanded that the movants be turned over to it; the home of the family of one of the movants was destroyed; members of the Negro race in the Groveland area were intimidated by the mob; widespread newspaper publicity in the area and other Florida counties had inflamed the public mind in Lake County; the public hostility and indignation in Lake County rendered it impossible to obtain a fair and impartial trial guaranteed by our State and Federal Constitutions; (6) a hostile atmosphere to the movants "now exists in Lake County and permeates the court house where the trial is to be had"; (7) "wild rumors are prevalent and mobs are likely to take the law into [fol. 883] their hands"; (8) the inflamed public mind in Lake County will prevent the movants from testifying in their own behalf; (9) the movants were beaten by law enforcement officers of Lake County; (10) the law enforcement officers of Lake County were hostile to the movants and their attorneys; (11) the home of the father and

mother of Samuel Shepherd was burned by a mob and the family and other Negroes were removed from the Groveland area to prevent a lynching (but returned to their homes); (12) troops were called out to maintain order about Groveland; (13) intimidation of the Negroes prevents them from giving testimony in behalf of the movants; (14) a fair and impartial trial guaranteed by both the State and Federal Constitutions cannot be had in Lake County.

The State of Florida, by an appropriate pleading, denied each and every allegation set out by the movants for a removal of the cause and the trial court heard evidence on the issues made by the pleadings. This Court is committed to the rule that an application for a change of venue is addressed to the sound discretion of the trial court and so long as the applicable law is substantially complied with, a ruling refusing to grant a change in venue will not be disturbed except upon a showing that there has been a palpable abuse of discretion. *Patterson v. State*, 157 Fla. 304, 25 So. (2d) 713; *Wadsworth v. State*, 136 Fla. 134, 186 So. 435, and similar cases.

It is not disputed that Irvin and Shepherd lived at or near Groveland and a mob burned the Shepherd home and two other houses about Groveland; that shortly thereafter troops were called and stationed at Groveland to preserve order but were removed from the troubled area on July 24, 1949. It is true that strained racial relations existed in about a five-mile square area which embraced Groveland, Mascotte and Starkey's Still. The flare subsided on or before July 24, 1949, the colored people returned to the area, order thereafter prevailed and the troops were recalled. Our study of the record reflects the view that harmony and good will and friendly relations continuously [fol. 884] existed between the white and colored races in all other sections of Lake County. The inflamed public sentiment was against the crime with which the appellants were charged rather than defendants' race. It is true that the newspaper carried reports of the alleged crime, but the impression of prejudice, if any, made yielded to the sworn testimony. A venire of 213 jurors issued and 81 jurors were examined on their voir dire when a jury of 12 men was obtained satisfactory to counsel and accepted to try the case.

Counsel for appellants cite our holding in *Johnston v. State*, 112 Fla. 189, 150 So. 278, and similar cases, to sustain the contention that the trial court erred in denying the motion for a change in venue. The facts presented here are in accord with our holding in *Powell v. State*, 131 Fla. 254, 175 So. 213; *Hysler v. State*, 132 Fla. 209, 181 So. 354; *Wadsworth v. State*, 136 Fla. 134, 186 So. 435, and *Haddock v. State*, 141 Fla. 132, 192 So. 802. An abuse of discretion in denying the motion has not been made to appear.

The trial court heard evidence in support of a motion by appellants to quash the indictment in the case at bar on the ground, among others, that the officials of Lake County, Florida, systematically and intentionally discriminated against members of the Negro race in selecting the grand jury which presented the indictment now before the court. For this reason it is contended that the grand jury was unconstitutionally obtained, although one member of the grand jury, it is admitted, was a colored man. Substantially the same motion to quash was directed to the venire of some 213 summoned to serve on the petit jury. Because of the similarity of the two questions presented here we are considering them as a single assignment. The members of the grand jury and the petit jurors required to render jury service during 1949 were taken from the same jury box.

[fol. 885] Qualifications and Disqualifications of Jurors:
Section 40.01 F. S. A., provides:

“(1) General Qualifications.—Grand and petit jurors shall be taken from the male persons over the age of twenty-one years, who are citizens of the state, and who have resided in this state for one year and in their respective counties for six months.

(2) General Disqualifications.—No person, who shall have been convicted of bribery, forgery, perjury or larceny, or any felony, unless restored to civil rights, shall be qualified to serve as a juror.

(3) Duty of Persons Selecting Jury Lists.—In the selection of jury lists only such persons as the selecting officers know, or have reason to believe, are law abiding citizens of approved integrity, good character, sound judgment and intelligence, and who are not phys-

ically or mentally infirm, shall be selected for jury duty".

Section 40.02, F. S. A., directs the Board of County Commissioners of Lake County, Florida, during the first week in January of each year, to prepare and select a jury list. It is the duty of the Commissioners personally to select, from the list of male persons who are qualified to serve as jurors, and make out a list of not less than 250 nor more than 500 persons qualified to serve as jurors, which list shall be signed and verified by said Commissioners as being personally selected and possessing the qualifications according to their best information and belief.

Section 40.06, F. S. A., provides for the transcription and preservation of persons selected to serve as jurors and the list by the Clerk of the Circuit Court, in the presence of the County Judge, shall write the name of the persons selected for jury duty on separate pieces of paper and shall deposit [fol. 886] such pieces of paper in a box constructed so that it may be closed and locked. The Clerk shall keep such box in his custody but the key shall be delivered to and kept by the sheriff. These persons so selected shall render jury service.

The Supervisor of Registration testified that Lake County had 14,182 voters. His record disclosed 13,380 white voters and 802 colored voters. Frank E. Owens, Chairman of the Board of County Commissioners of Lake County, Florida, testified that he and other members of the Board prepared the list of jurors during January, 1949, and in so doing selected and placed on the jury list the names of white and colored persons. The names were taken from the voters registration list of Lake County in proportion to the number of white and colored persons whose names were on the voters registration books. The rule as testified about had been observed in Lake County for many years. It appears by the testimony of the officials of Lake County that the above statutes were substantially complied with in selecting persons for jury service.

Counsel for appellants point out that many Negro citizens of Lake County, during the year 1949 and prior years, were home owners; many owned, resided upon and operated farms situated in the county; some Negro citizens owned

and operated private businesses therein; other Negro citizens held responsible positions and rendered some of the people of the county a public service; and that many of the Negro residents of Lake County were honest, dependable and substantial citizens. The officials of Lake County, it is contended, unconstitutionally and intentionally discriminated against the Negro citizens of Lake County in selecting persons for jury service for the year 1949 although one colored man was on the grand jury which presented the indictment against the appellants. Authorities are cited in their brief to sustain the contention. We have examined the authorities relied upon in light of the contention made and it is our conclusion that the evidence adduced fails to establish an unconstitutional, intentional [fol. 887] and systematic discrimination by the officials against the Negroes of Lake County in January, 1949, when selecting the names of persons for jury duty as authorized by the statutes of Florida.

On July 20, 1949, the grand jury of Lake County presented the indictment now before us in the court below. The defendants-appellants were placed on trial on September 1, 1949, or approximately forty-five days after the commission of the alleged crime. It is contended here by the appellants that this period of time was insufficient in which to prepare their case for trial. Section 11 of the Declaration of Rights of the Constitution of Florida guarantees persons accused of crime a speedy public trial, by an impartial jury . . . and shall be heard by themselves or counsel . . . to meet the witnesses against them face to face and shall have compulsory process for the attendance of witnesses in their favor. . . .

Our State and Federal Constitutions accord these Negro defendants-appellants equal rights of men before the law, not only in the enjoyment of life but in the defense of their lives, liberty and the protection of their property. All men are equal before the law. A defendant brought before a tribunal for trial, with power to take his life or liberty, wherein the prosecution is represented by experienced and learned counsel, then it is consistent with natural justice, and the policy of modern criminal law, that an accused, even if he is poor and unable to obtain counsel, shall be furnished counsel to protect his rights at each step of the proceeding. It is established law that no per-

son accused of a serious crime should be forced into trial without a reasonable opportunity to obtain counsel and properly prepare his defense. Frequently the minds of reasonable men differ on what constitutes sufficient time to prepare for trial. The answer is found in the facts of each particular case.

[fol. 888] It appears by the record that attorney Franklin H. Williams, of the New York City Bar, contacted the appellants at Raiford about the first of August, 1949. Some two weeks thereafter they were returned to Tavares and attorney Gaylord was by the court appointed to represent them when they plead to the indictment. Attorney Williams employed counsel for the defendants and organized their defense. He participated in the trial below and orally argued the cause, with other counsel, at the bar of this Court. It is quite true that additional counsel was retained around August 22, 1949. The record reflects that all legal rights of the appellants were ably and thoroughly presented in the lower court and on appeal here. It is not clearly shown that the trial court committed reversible error in placing the defendants-appellants on trial within forty-five days after the commission of the alleged crime.

It is next contended that the evidence adduced by the prosecution to establish the crime of rape was legally insufficient; that it was impossible for the crime to have been committed within the limited time as testified to by the State witnesses. Two witnesses for the State testified as to the identity of the four Negroes. From the description of the automobile as given by the two witnesses the same was later located. The three defendants testified they were driving the car in question during the same hours of the early morning except they were driving in the Orlando area, which was in the opposite direction.

The four men during the time kept the woman covered with a pistol. One of the defendants when taken into custody shortly after the alleged crime had a pistol, which was filed as an exhibit by the prosecution. Near the scene of the crime a handkerchief and some cotton were found. The woman was found near the scene of the crime about dawn. A large track about the scene fit the shoe of one of the appellants. Cotton or lint about the car and broken glass in the automobile testified to by the woman assisted the officers in identifying the car which the appellants

[fols. 889-890] admit they were riding in at the exact hour the State charged the crime was committed. We find in the record detailed corroborative testimony of that as given by the prosecutrix. As we study the testimony, the only question presented here is which set of witnesses would the jury believe, that is, the State's witnesses or the testimony as given by the defendants-appellants. Disputes and conflicts in the testimony are for the jury. See *Albritton v. State*, 132 Fla. 801, 182 So. 286, and similar cases.

We fail to find error in the record.
Affirmed.

ADAMS, C. J., TERRELL, THOMAS, SEBRING, HOBSON AND
ROBERTS, J. J. CONCUR

[fols. 891-896] IN THE SUPREME COURT OF FLORIDA
JANUARY TERM A. D. 1950, LAKE COUNTY

SAMUEL SHEPHERD AND WALTER IRVIN, APPELLANTS

vs.

STATE OF FLORIDA, APPELLEE

JUDGMENT—MAY 16, 1950

This cause having heretofore been submitted to the Court upon the transcript of record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the costs in this behalf expended be and the same are hereby taxed against the County of Lake, the Appellants having been adjudged insolvent, which costs are taxed in the sum of \$—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Chapman was this day ordered to be filed.

[fols. 897-914] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING— July 5, 1950

County for Appellants having filed in this cause Petition for Rehearing and having been duly considered, it is ordered by the Court that said Petition be and the same is hereby denied.

(The mandate in this cause has today been issued and mailed to the Clerk of the Circuit Court for Lake County.)

[fol. 915] SUPREME COURT OF THE UNITED STATES

October Term, 1950

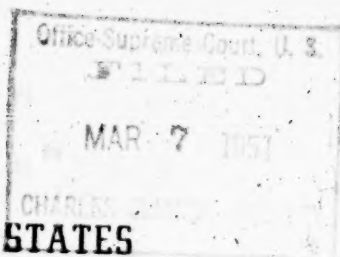
No. 189, Misc.—

On petition for writ of Certiorari to the Supreme Court of the State of Florida.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR WRIT OF CERTIORARI ETC.
—November 27, 1950.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 420.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 420

SAMUEL SHEPHERD AND WALTER IRVIN,
Petitioners,

vs.

THE STATE OF FLORIDA,
Respondent

BRIEF FOR PETITIONERS

ALEX AKERMAN, JR.,
FRANKLIN H. WILLIAMS,
THURGOOD MARSHALL,
ROBERT L. CARTER,
Attorneys for Petitioners.

CONSTANCE BAKER MOTLEY,
JACK GREENBERG,
Of Counsel.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statement of the Case	2
Statement of Facts	3
Errors Relied Upon	9
Argument	10 ⁴
A—Petitioners Were Denied The Guarantees of The Fourteenth Amendment in That The Jury Was Chosen in Furtherance of An Admitted Policy of Selecting Jurors Ac- cording To A System of Purposeful Racial Proportionate Representation Which Lim- ited The Numbers of Negroes Serving on Juries Because of Their Race	10
B—Petitioners, In Being Denied A Continuance Were Denied The Adequate Assistance of Counsel, Contrary to <i>Powell v. Ala- bama</i> , 287 U. S. 45	20
C—The Denial of Petitioners' Motions for Change of Venue and The Denial of Their Motion For A Continuance Violated The Due Process Clause of The Fourteenth Amendment in That Petitioners Were Compelled to Undergo A Trial Dominated By Passion and Prejudice Contrary to The Rule of <i>Moore v. Dempsey</i> , 261 U. S. 86	26
Conclusion	30

TABLE OF CASES

<i>Avery v. Alabama</i> , 308 U. S. 444	20
<i>Ballard v. United States</i> , 329 U. S. 187	18
<i>Cassell v. Texas</i> , 339 U. S. 282	10, 12
<i>Fay v. New York</i> , 332 U. S. 261	15, 17
<i>Glasser v. United States</i> , 315 U. S. 60	17
<i>Green v. Briggs</i> , 1, Curtiss 311, 335 (C.C. 1852)	28

	Page
<i>Haley v. Ohio</i> , 332 U. S. 596	10
<i>Hill v. Texas</i> , 316 U. S. 400	15
<i>Hurtado v. California</i> , 110 U. S. 516 (1883)	28
<i>Hirabayashi v. United States</i> , 320 U. S. 81	18
<i>Hughes v. Superior Court</i> , 339 U. S. 460, 464	18
<i>The King v. Faulk</i> , 2 Ld. Raym. 1452; 92 E.R. 445 (1726)	29
<i>The King v. Harris, Alderman of Gloucester et al.</i> , S.C. 3 Burr, 1330 1 Black W379; 96 E.R. 213 (1762)	29
<i>Korematsu v. United States</i> , 323 U. S. 214	18
<i>Malinski v. New York</i> , 324 U. S. 41	10
<i>Martin v. Texas</i> , 200 U. S. 316	15
<i>Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.</i> , 312 U. S. 287	27
<i>Moore v. Dempsey</i> , 261 U. S. 86	26
<i>Murray v. Hoboken</i> , 18 Howard 272, 276 (1856)	28
<i>Mylock v. Saladine</i> , S. C. 3 Burr, 1564 1 Black W. 481; 96 E. R. 278	29
<i>Nixon v. Herndon</i> , 273 U. S. 536	18
<i>Ownbey v. Morgan</i> , 256 U. S. 94	28
<i>Oyama v. California</i> , 332 U. S. 633	18
<i>Patton v. Mississippi</i> , 332 U. S. 463	10
<i>People v. MacLaughlin</i> , 150 N. Y. 365, 376 (1896)	29
<i>Powell v. Alabama</i> , 287 U. S. 45	20
<i>R. v. Burnaby</i> , (1723) 8 Mod. Rep. 146; 88 E.R. 110	29
<i>R. v. Lewis</i> , (1726) Sess. Cas. K.B. 90; 2 Stra. 704; 93 E. R. 91	29
<i>R. v. Orme and Nutt</i> , 1 Ld. Raym. 486, 91 E.R. 1224	29
<i>Shepherd v. Florida</i> , 46 So. 2d 880 (1950)	1, 13
<i>Smith v. Texas</i> , 311 U. S. 128	16
<i>Steele v. L. N. R. R. Co.</i> , 323 U. S. 192	18
<i>Strauder v. West Virginia</i> , 100 U. S. 303	14, 15
<i>Takahashi v. Fish & Game Commission</i> , 334 U. S. 410	18
<i>Thiel v. Southern Pacific Co.</i> , 328 U. S. 217	17
<i>United States v. Wood</i> , 299 U. S. 123, 134 (1936)	28
<i>Vanhorne v. Dorrance</i> , 2 Dall. 304 (1795)	28
<i>Ward v. Texas</i> , 316 U. S. 547	10

INDEX

iii

STATUTES

	Page
15 Code of Ala. (1940) Section 267	30
44 Ariz. Code Anne. (1939) Section 1206	30
Penal Code of California (1949) Section 1033	30
III Gen. Stat. Conn. (1949 Revision) Section 8794	30
Fla. Stat. Ann. (1943):	
Section 40.01	11
Section 40.02	11
Section 52.02	
2 Ga. Code Ann. (1948) Section 4906	30
Title 28, United States Code, Section 1257	1
United States Constitution, Fourteenth Amendment	1, 10

OTHER AUTHORITIES

Dacons Abridgment (T. & J. W. Johnson & Co., Edition 186-76	29
Dowling Cases on American Constitutional Law (1937) 632	28
Goebel, Constitutional History and Constitutional Law, 38 C. L. R. 55	28
Map, U. S. Dept. of Interior Geological Survey of State of Florida	27
President's Commission on Higher Education, "Higher Education for American Democracy," Vol. 1 (1947), p. 35	18
Report of New York State Committee Against Discrimination (1949), p. 30	18
Tidds Practice (Ninth Edition, 1820)	28

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 420

SAMUEL SHEPHERD AND WALTER IRVIN,

Petitioners,

vs.

THE STATE OF FLORIDA,

Respondent.

BRIEF FOR PETITIONERS

Opinion. Below

The opinion of the Supreme Court of Florida is reported in 46 So. 2d 880. This opinion and the order denying petitioner's motion for rehearing appear at pages 400 and 409 of the record.

Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code; section 1257, this being a case involving rights secured under the Fourteenth Amendment to the Constitution of the United States. Petitioners were convicted of rape in the Circuit Court for the Fifth Judicial Circuit in and for Lake County, Florida, and were sentenced to death therefor on September 3, 1949 (R. 47, 48).

The judgment was affirmed by the Supreme Court of the State of Florida on the 16th day of May, 1950 (R. 400-408). Petition for rehearing was denied on the 5th day of July, 1950 (R. 409). Petitioners petition this Court for certiorari on the 30th day of September, 1950, which was granted November 27th, 1950 (R. 409). At each stage of the proceedings herein, petitioners raised and maintained their basic contentions that they were denied rights secured by the Constitution of the United States in that they were tried by a jury selected on the basis of race and color, were denied the adequate assistance of counsel, and were tried in an atmosphere of passion and prejudice, all in contravention of the Fourteenth Amendment to said Constitution. A stay of execution granted by the Supreme Court of Florida is now in effect (R. Original 902).

Statement of the Case

On the 22nd day of July, 1949, petitioners were indicted for the rape of a white woman in Lake County, Florida (R. 5). On August 12, 1949, represented by court-appointed counsel, Harry E. Gaylord, they were arraigned (R. 7) and pleaded not guilty (R. 9). Desiring to be represented by counsel of their own selection, they retained Franklin H. Williams, a member of the Bar of the State of New York, to aid them in seeking ~~and~~ selecting counsel of their choice (R. 380-381). Counsel of their choice was not selected until August 22d, 1949 (R. 382, 378). On August 25, 1949, petitioners' retained counsel, Alex Akerman, Jr., Joseph E. Price, Jr., and Franklin H. Williams, appeared in court as defense counsel (R. 380), court-appointed counsel having retired from the case on August 24th (R. 380). Petitioners' new defense counsel made motions attacking the constitution of the grand jury (R. Original 70) and the petit jury (R. 43) and moved for a continuance (R. 12, 34) and a

change of venue (R. 24, 40), none of which had been done by court-appointed counsel. All these motions were denied (R. 203, 206, 399) and petitioners, preserving their rights therein, went to trial on September 1, 1949. They were convicted and sentenced to death (R. 47, 48). Further proceedings followed, as outlined in the jurisdictional statement above resulting in petitioners bringing this case here praying for a petition for certiorari.

Statement of Facts

On the morning of July 16, 1949, a young white woman reported that she had been raped by four Negroes in Lake County, Florida. Petitioners Shepherd and Irvin, 22 year-old Negro youths, were charged with the crime and arrested in Groveland, Florida, that morning shortly before 7 A. M. and taken to the county jail of Lake County in Tavares, Florida.

When the white community learned of the alleged crime, mob violence erupted in Groveland and adjoining communities. Among the incidents of violence were the killing of a suspect (R. 22), the burning of petitioner Shepherd's home and the homes of other Negroes (R. 90-92, 95, 197), gunfire shot into a Negro cafe (R. 91) and the threat to destroy Sturkeys Still, a Negro settlement west of Groveland (R. 97).

Petitioners Shepherd and Irvin took the stand and attempted to testify that they had been beaten, but objection by the State to the introduction of such testimony was sustained by the trial court (R. 136, 138). The sheriff was accused of intimidating petitioners and threatening to arrest their attorneys (R. 185). He denied this, stating: "I asked them if those nigger lawyers were putting the stuff in their head that they were trying to—the same poison that they were putting in the northern newspapers" (R. 186).

It became immediately necessary to remove petitioners from the county jail to the state prison, the order for their removal stating that there was not time to first communicate with the Governor (R. 6). The Governor called the National Guard from nearby Leesburg, Eustis and Tampa (R. 98, 108, 110-111) and the Guard patrolled the main streets of Groveland and Mascotte, a community about three miles west of Groveland (R. 109). It remained on duty during the grand jury session at which an indictment against petitioners was returned on July 20, 1949 (R. 76), and so remained for approximately a week thereafter (R. 98).

The entire Negro community in Groveland abandoned their homes, farms and businesses and fled to nearby Lakeland, Orlando and Leesburg, Florida (R. 91, 94, 97, 184). One of the petitioners was unable to locate his family and testified that he feared their coming back to testify on his behalf (R. 138).

There was a tremendous amount of newspaper publicity of an inflammatory nature. One of the leading papers, the "Orlando Morning Sentinel," on Tuesday, July 19, 1949, the day before the grand jury returned its indictment, carried on its first page a cartoon consisting of four electric chairs and the caption, "No Compromise—Supreme Penalty" (R. 69). All the local newspapers published similar flaming headlines up until the day of the trial.

Charles Medlin, Business Manager of the Orlando Daily News Corporation, publisher of the "Orlando Evening Star," "Orlando Morning Sentinel" and "Sunday Sentinel Star," three papers which circulate in Lake County, Florida (R. 187, 188), and have the reputation of being leading Florida papers (R. 79, 80), testified that articles, cartoons, editorials and pictures bearing the following headlines

were published in his newspaper from July 17 to August 14, 1949:

- "Lake County Bride Kidnapped" (R. 64)
- "Troops Ordered to Groveland" (R. 66)
- "Mob Violence Flared After Kidnapping" (R. 66)
- "Third Kidnapper Captured" (R. 67)
- "National Guard Leaves Groveland" (R. 67)
- Pictures of National Guard on duty—Box entitled "Demonstration" (R. 67)
- "Mob Violence Flares in Lake" (R. 68)
- "Negro Houses Burned" (R. 68)
- "Men to Defy Officers" (R. 68)
- "New Violence in the Groveland Kidnapping" (R. 69)
- Cartoon: "No Compromise—Supreme Penalty"
- Pictures of four electric chairs (R. 69)
- "Tense Quiet at Groveland" (R. 70)
- "Sheriff Promises to Halt Violence" (R. 70)
- Picture: "Night Ridders Burn Lake Negro Homes" (R. 70)
- Picture: Police chief showing bullet holes in clothes—result of shooting through door of "honky-tonk" (R. 70)
- Editorial: "Cool Heads Needed" with reference to "smart lawyers" (R. 70-71)
- "Groveland Under Virtual Martial Law" (R. 73)
- "Negro Evacuees Sheltered Here" (R. 73)
- Picture: "Flames From Negro Homes Light Night Sky in Lake County" (R. 73)
- Picture: "Standing Road Guard at Sturkeys Still on a weapons carrier with a fifty caliber machine gun mounted are Florida National Guardsmen of the 116th Field Artillery Battalion. The Battalion moved in last night heavily armed to prevent further violation following outbreak Monday night. Three Negro homes were burned here Monday night" (R. 74).
- "Lake Jury Indicts Trio for Assault" (R. 74)
- "March DuBose, first Negro to serve on Lake Grand Jury, accepted without protest" (R. 75)

Picture: "Lake County Grand Jury Probing in the case" (R. 75)

"Groveland Tension Simmers" (R. 75)

"Troops Remain at Groveland" (R. 76)

"McCall Reports All Quiet in Groveland" (R. 77)

"Negro Attack Suspect Killed" (R. 77)

"Negro Killed" (R. 78)

"Trial Scheduled in Attack Case" (R. 79)

"McCall Says Beating Charge Damn Lie" (R. 79)

Managers, editors, and owners of the other papers which circulate in Lake County testified to similar headlines and articles. They were introduced as exhibits by petitioners upon the hearing of the motions for change of venue and continuance (R. 62-135 passim), but the reading of the articles into the record was denied by the court (R. 65).

Newspapermen testified that the sheriff told them that petitioners had confessed and that they published this fact in their newspapers (R. 114-115). The alleged confessions were not introduced in evidence but, as petitioners' court-appointed counsel testified, news of the alleged confessions was widely publicized (R. 221). Witnesses for the state testified that they had read or heard that petitioners had confessed (R. 146, 152, 164). All of the persons called for jury duty testified that they had read of the case in the newspapers or heard it discussed (R. 207-374 passim).

Local defense counsel was not retained until August 22, 1949, the trial having been scheduled originally for August 29, 1949 and subsequently postponed until September 1, 1949. Local counsel could not be retained before this date because of the circumstances surrounding the crime and the violent reaction of the community (R. 381, 382).

The nine day interim between securing of local counsel and the time of the trial was taken up with filing and hearing preliminary motions. A motion to withdraw plea and

set aside arraignment in order that certain pre-arraignment motions might be made was filed; heard and denied on August 25 (R. 377-400). Immediately thereafter, petitioners filed a motion to quash the indictment (R. 399). This motion the court refused to consider on the ground that it was filed too late (R. 55). A second motion to withdraw plea, set aside arraignment and to quash was made on August 29 and subsequently denied (R. 58). On the same day, August 29, defense counsel filed motion for change of venue which was heard with the motion for continuance on August 30, 1949. The motion to change venue as well as for continuance was denied on August 31 (R. 203-204). A challenge to the panel was filed before trial on September 1, 1949 and promptly denied (R. 205). Defense counsel then moved again for a continuance upon all of the grounds previously set forth which was denied (R. 206).

In addition to being occupied in the few days preceding trial with motions and hearings on same which continued until late into the night, defense counsel were hindered in securing necessary affidavits because prospective affiants were frightened (R. 383). They were also hindered by the fact that local defense counsel resided in Orlando, Florida, thirty miles from the place of trial and had to commute each day (R. 136). They were further hindered by the fact that Orlando was hit by a hurricane, which blew down a number of trees, just prior to trial (R. 80).

The Clerk of the Court testified that he had been so employed for a period of twenty-one years and that he could not recall ever seeing a Negro on the grand jury during that time (R. 181). The jury by which petitioners were tried was established by a system of racial proportional representation (R. 176, 177).

In an attempt to secure an orderly trial, the trial court adopted and published beforehand the following special

rules and regulations governing attendance and conduct of the public at the trial (R. 10):

* * * "For all sessions of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Lake County, to be held during the week beginning August 29, 1949, the following rules will be in force and effect:

"1. Only such number of visitors will be allowed to enter the court room as can be seated by the regular seating accommodations of the court room, and no one will be allowed to stand while Court is in session, except the officers of the Court and those engaged in the trial.

"2. No one will be allowed to stand or loiter in the hallways outside the court room on the third floor of the court house while Court is in session or during the time thirty minutes before Court convenes and thirty minutes after Court recesses or adjourns.

"3. No one will be allowed to stand, sit or loiter on the stair steps of the court house above the second floor.

"4. The elevator will be closed to all except officers of the Court, or individuals to whom the Sheriff may give special permission because of age or physical infirmity, or who may be by him permitted to visit the jail quarters on the fourth floor.

"5. Each person desiring to go to the court room floor will be required to submit to search by the Sheriff or his deputies for weapons.

"6. No person will be permitted to take any valise; satchel, bag, basket, bottle, jar, jug, bucket, package, bundle, or other such item to the third floor of the court house.

"7. All crutches, canes, walking sticks, and other aids to locomotion shall be carefully inspected by the Sheriff or his deputies, and unless necessary for the individual as an aid to walking shall not be allowed above the second floor of the court house.

"8. No demonstration of any nature, handclapping or otherwise, will be permitted at any time while Court is in session.

"9. The Sheriff will permit entry to the court room by the general public by only two doors, at each of which he will place a deputy or bailiff at all times while Court is in session.

"10. No one, other than officers of the Court, jurors, the defendants, members of the bar, witnesses and the press, exclusive of photographers, shall be allowed inside the railing.

"11. No pictures or photographs shall be made, exposed or taken inside the court room, and no one will be allowed to take any photographic or picture making devise inside the court room.

"12. The Sheriff of Lake County, Florida, is charged with the duty of enforcing these rules and to that end he is authorized to employ such number of deputies as may be necessary at the expense of Lake County, Florida, as part of the costs of the trial to be conducted during the time covered by these rules."

Errors Relied Upon

I

The Florida Court was in Error in Holding that the Jury by which Petitioners were Convicted was Constitutionally Established, for the Reason that Said Jury was drawn from a Panel Established by a System of Purposeful Racial Proportional Representation, which this Court has stated to be Unconstitutional.

II

The Florida Court was in Error in Holding that Petitioners Herein had the Adequate Assistance of Counsel, for the Reason that Adequate Time for Counsel's Preparation was denied.

III

The Florida Court was in Error in Holding that Petitioners were not Entitled to the Change of Venue, for the Reason that Passion and Prejudice in the County had made a Fair Trial Impossible.

ARGUMENT

There is no question concerning the propriety of this case in this Court, and none has been advanced. Petitioners raised all the constitutional questions here relied on in the proper manner and at proper times. (Before trial (R. 12, 34; 24, 40; 43), on motion for new trial (R. 45), on appeal (R. 50), on motion for rehearing R. Original 893), on petition for certiorari.)

The rights here violated are of a kind which this Court has always been diligent to protect. Whether federal guarantees of the sort here involved have been violated is a question which this Court has consistently determined itself by independent examination of the record, *Cassell v. Texas*, 339 U. S. 282; *Haley v. Ohio*, 332 U. S. 596; *Ward v. Texas*, 316 U. S. 547; *Malinski v. New York*, 324 U. S. 401; *Patton v. Mississippi*, 332 U. S. 463.

A

Petitioners Were Denied the Guarantees of the Fourteenth Amendment in that the Jury Was Chosen in Furtherance of an Admitted Policy of Selecting Jurors According to a System of Purposeful Racial Proportionate Representation Which Limited the Numbers of Negroes Serving on Juries Because of Their Race.

It is elementary that the actions of the Board of Commissioners in jury selection were controlled by the Fourteenth Amendment. (Anno: 94 L. ed. 856, 858) (1951)

Therefore, we immediately come to the question upon which this portion of petitioners' case stands or falls:

Can a jury constitutionally convict a Negro defendant if its members are chosen from a panel on which the service of Negroes is limited by a formula which places Negroes thereon in a proportion to whites as the number of Negroes are to the number of whites on the voting list of the county?

The purposeful racial proportional representation questioned above occurred in this case. Although the Florida statutes prescribing the method of selecting jurors¹ do not so provide, the Board of County Commissioners so selected. The testimony of the Chairman of the Board is unequivocal.

"Question: As chairman of the board of county commissioners, I will ask you if it is the duty of the county commissioners to place the name of jurors in the box?

"Answer: It is.

"Question: Were you present when the regular box was prepared in January, 1941?

"Answer: I was.

"Question: In what proportion were the colored people and the white people put in that box?

¹ 40.01 Qualification and disqualification of jurors. (1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months; provided however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list. (2) No person who shall have been convicted of bribery, forgery, perjury, or larceny, or any other felony unless restored to civil rights, shall be qualified to serve as a juror. (3) In the selection of jury lists only such persons as the selecting officers know, or have reason to believe are law abiding citizens of approved integrity, good character, sound judgment and intelligence, and who are not physically or mentally infirm, shall be selected for jury duty.

40.02 . . . said commissioners shall personally select, from the lists of male persons who are qualified to serve as jurors under the provisions of § 40.01. . . .

"Answer: In proportion as the colored people were to the total registration in the county.

"Question: You mean the registered colored voters to the registered white voters?

"Answer: Right.

"Question: Is that made fairly and in proportion of those two numbers?

"Answer: It is.

"Question: Was that done in the box in January, 1949?

"Answer: It was.

"Question: Was it also done in the box, the special box that was recently made?

"Answer: It was." (R. 176.)

Upon cross-examination, the same witness testified, in referring to the racial complexion of the jury lists:

"Question. Didn't you put them in in proportion to that?

"Answer: We do, because we know the colored folks and the white folks." (R. 177.)

In its brief in opposition to petitioners' petition for certiorari, respondents admit the racial limitation by proportional representation, but seek to justify it as "the only method that is humanly possible, practicable, and fair to both races; —." (Brief in opposition, p. 13)

Although petitioners argued the question and submitted the opinion in *Cassell v. Texas*, 339 U. S. 282, to the Supreme Court of Florida, it gave no answer thereto merely stating:

"We have examined the authorities relied upon in light of the contention made and it is our conclusion that the evidence adduced fails to establish an unconstitutional, intentional and systematic discrimination by the officials against the Negroes of Lake County in January, 1949, when selecting the names of persons

for jury duty as authorized by the Statute of Florida.”
Shepherd v. Florida, 46 So. 2d 880, (1950)

However, an answer to the first part of this question has clearly been given by this Court in the case of *Cassell v. Texas*, supra, in which the opinions of Mr. Justice Reed, Mr. Justice Frankfurter and Mr. Justice Clark agreed that a quota system of Jury selection was unconstitutional:

“ . . . If, notwithstanding this caution by the trial court judges, commissioners should limit proportionally the number of Negroes selected for grand-jury service, such limitation would violate our Constitution. Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race.

“We have recently written why proportional representation of races on a jury is not a constitutional requisite. Succinctly stated, our reason was that the Constitution requires only a fair jury selected without regard to race. Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation. Similarly, since there can be no exclusion of Negroes as a race and no discrimination because of color, proportional limitation is not permissible. That conclusion is compelled by the United States Code, title 18, §243, based on §4 of the Civil Rights Act of 1875. While the language of the section directs attention to the right to serve as a juror, its command has long been recognized also to assure rights to an accused. Prohibiting racial disqualification of Negroes for jury service, this congressional enactment under the Fourteenth Amendment, §5, has been consistently sustained and its violation held to deny a proper trial to a Negro accused. Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race.” Mr. Justice Reed,

339 U. S. at pp. 286, 287. Concurring, The Chief Justice, Mr. Justice Black and Mr. Justice Clark.

" . . . It is not a question of presence on a grand jury nor absence from it. The basis of selection cannot consciously take color into account. Such is the command of the Constitution. Once that restriction upon the State's freedom in devising and administering its jury system is observed, the States are masters in their own household. If it is observed, they cannot be charged with discrimination because of color, no matter what the composition of a grand jury may turn out to be." Concurring opinion by Mr. Justice Frankfurter, 339 U. S. at p. 295. Concurring therein, Mr. Justice Burton and Mr. Justice Minton.

" . . . But they are also told quite properly that a token representation of a race on a grand jury is not a constitutional requisite; that in fact it may reach the point of illegality; that representation on the grand jury by race in proportion to population is not permissible for there must be 'neither inclusion nor exclusion because of race.' " Concurring opinion by Mr. Justice Clark, 339 U. S. at pp. 297-298.

The opinions in *Cassell, supra*, were no aberrations—to the contrary they derived from a long series of this Court's opinions which struck down discrimination in jury selection, and soundly accord with their reasoning and holdings.

At the very outset, in *Strauder v. West Virginia*, 100 U. S. 303, it was recognized that racial manipulation of the jury panel (in that case total exclusion of Negroes) was:

" . . . practically a brand upon them, affixed by the law; an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." at p. 308

The Constitution, it was held, protected defendant from trial in such a system of justice.

In subsequent cases, although total exclusion was usually the method of discrimination employed, the Court has made it clear that it is the *discrimination* which is proscribed, not the particular method, no matter how sophisticated. In *Martin v. Texas*, 200 U. S. 316, the Court stated at p. 321:

"What an accused is entitled to demand, under the Constitution of the United States, is that, in organizing the grand jury as well as in the impanelling of the petit jury, there shall be no exclusion of his race, and no discrimination (Italics added) against them, because of their race or color. *Virginia v. Rives* (Ex parte Virginia), 100 U. S. 313, 323, 25 L. ed. 667, 671; *Re Wood*, (*Wood v. Brush*) 140 U. S. 278, 285, 35 L. ed. 505, 508, 11 Sup. Ct. Rep. 738."

In *Fay v. New York*, 332 U. S. 261, it was again recognized that *discrimination* is the prohibited act.

"Nor is there any such persuasive reason for dealing with purposeful occupational or economic discriminations if they do exist as presumptive constitutional violations, as would be the case with regard to purposeful *discriminations* (italics added) because of race or color. We do not need to find prejudice in these latter exclusions, but cf. *Strader v. West Virginia*, 100 U. S. 303, 306-309, 25 L. ed. 664, 665, 666, for Congress has forbidden them, and a tribunal set up in defiance of its command is an unlawful one whether we think it unfair or not." at p. 292.

Again in *Hill v. Texas*, 316 U. S. 400, the Court stated:

"Where, as in this case, timely objection has laid bare a *discrimination* (italics added) in the selection of grand jurors, the conviction cannot stand because the Constitution prohibits the procedure by which it was obtained." at p. 406.

That racial proportional representation is racial discrimination is a matter of definition. Selection on the basis

of race is merely another way of saying discrimination among persons on the basis of race, as was recognized in *Cassell, supra*.

In addition, petitioners submit that whatever the long term statistical implications, the system employed deprived or reduced the probability of these defendants being tried before a jury composed solely or largely of members of their own race by limiting the number of Negroes on the panel. For example, by this quota system, if the quota of Negro jurors were met before selection of the entire panel, qualified Negroes who might thereafter be chosen would have to be rejected solely on the basis of race. If "relevant judgment" or the "uncontrolled caprices of chance" were employed, racial criteria would be unavailable and a jury would be more likely to contain a majority or be entirely composed of Negroes, although it could also constitutionally contain none.

Opinions of this Court have stated the relevant constitutional criteria for the selection of jurors. Within, but only within these limits, the states may administer their jury systems as they deem best.² Generally, these limits exclude undemocratic methods of selection; more specifically, they exclude selection on the basis of race. In *Smith v. Texas*, 311 U. S. 128, the opinion of the Court stated:

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government." at p. 130.

² *Cassell v. Texas*, *op. cit. supra*, at p. 295.

In *Glasser v. United States*, 315 U. S. 60, it was stated:

"But even as jury trial, which was a privilege at common law, has become a right with us, so also, whatever limitations were inherent in the historical, common law concept of the jury as a body of one's peers do not prevail in this country. Our notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government." at p. 85.

Similarly in *Thiel v. Southern Pacific Company*, 328 U. S. 217, Mr. Justice Frankfurter, in dissent, stated:

"Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case. Since the color of a man's skin is unrelated to his fitness as a juror, Negroes cannot be excluded from jury service because they are Negroes. E. G., *Carter v. Texas*, 177 U. S. 442 44 L. ed. 839, 20 S. Ct. 687.

"A group may be excluded for reasons that are relevant not to their fitness but to competing considerations of public interest, as is true of the exclusion of doctors, ministers, lawyers, and the like. *Rawlins v. Georgia*, 201 U. S. 638, 50 L. ed. 899, 26 S. Ct. 560, 5 Ann. Cas. 783. But the broad representative character of the jury should be maintained, partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility. See *Smith v. Texas*, 311 U. S. 128, 130, 85 L. ed. 84, 86, 61 S. Ct. 164." at p. 227.

In *Fay v. New York*, 332 U. S. 261, Mr. Justice Murphy, in dissent, stated:

"The equal protection clause of the Fourteenth Amendment prohibits a state from convicting any person by use of a jury which is not impartially drawn from a cross-section of the community. That means that juries must be chosen without systematic and

intentional exclusion of any otherwise qualified group of individuals . . . Only in that way can the democratic traditions of the jury system be preserved . . .” at pp. 296-297.=

In *Ballard v. United States*, 329 U. S. 187, Mr. Justice Frankfurter stated in dissent:

“ . . . This Court decided *Glasser v. United States*, 315 U. S. 60, 86 L. ed. 680, 62 S. Ct. 457, which indicated that we deemed it important that a jury be selected on what may be described as a modern democratic basis . . .” at p. 198.

Aside from the specific condemnations of racially selected juries discussed above, racial classifications such as those here employed have been frequently condemned by this Court as odious to our form of government.³

This case demonstrates how a racial proportional representation system in combination with a perhaps otherwise permissible criterion, such as the voting list, can completely prevent even the avowed proportional representation, and thoroughly destroy democracy in a jury system.

In addition to all that has been stated above, the pernicious effects of the Lake County jury system were aggravated by the fact that the list from which the panel was selected and from which the racial formula was derived was one on which the proportion of Negroes to whites was very much smaller than the proportion of Negroes to whites in the general population.

³ *Hirabayashi v. United States*, 320 U. S. 81; *Nixon v. Herndon*, 273 U. S. 536; *Steele v. L. & N. R. R. Co.*, 323 U. S. 192; *Korematsu v. United States*, 323 U. S. 214; *Gyama v. California*, 332 U. S. 633; *Takahashi v. Fish and Game Commission*, 334 U. S. 410. As to the evils of racial quotas generally, see Report of the President's Commission on Higher Education, "Higher Education for American Democracy," Vol. 1 (1947), p. 35; Report of New York State Committee Against Discrimination (1949), p. 30; also Cf. *Hughes v. Superior Court*, 339 U. S. 460, 464.

In Lake County, the venue of the instant case, according to census figures, there is a total population over twenty-one years of age of approximately thirteen thousand five hundred (13,500). Of this number, Negroes constitute approximately one-third or four thousand five hundred (4,500). That the number of Negroes possessing the general qualifications for jury service is in the same proportion as white persons is the only fair conclusion to be drawn from the testimony of the state's witnesses at the hearing concerning the character, reputation and status of Negroes in that county (R. 126, 133, 134, 135, 147, 149, 155, 161, 163, 172, 183, 192).

In spite of this general knowledge of the presence of such a large body of Negroes within a county who met the statutory qualifications for jury service, at least one-third ($\frac{1}{3}$) of the qualified persons, the chairman of the Board of County Commissioners testified that the jury lists were made up "from the registered voters in the county" (R. 176). He knew, or should have known, that when this arbitrary additional qualification of "registration" is applied to potential jurors, the proportion of available Negroes then diminished to about one-sixteenth ($\frac{1}{16}$) (R. 175). When this fact is considered along with evidence of the long and continued absence of any Negro from a grand or petit jury in Lake County, its purpose and design become evident and its obvious discriminatory intent plain.

Petitioners believe that they have made it clear that a jury constituted by a system of racial proportional representation is unconstitutional *per se*. However, they desire to point out that there are endless possibilities of racial manipulation when such a system is employed.

B

Petitioners, in Being Denied a Continuance, Were Denied the Adequate Assistance of Counsel, Contrary to Powell v. Alabama, 287 U. S. 45.

Respondents concede that the law requires that an accused is entitled to a reasonable time to advise with counsel and prepare his defense.⁴ (Brief in Opposition, 18). They merely dispute that such time was not available. The record discloses that counsel of petitioners' choice were finally engaged ten days before the trial date (R. 378). Counsel satisfactory to petitioners could not be engaged prior to this time because of widespread prejudice against petitioners even though many members of the bar were approached and asked to serve (R. 81, 382).

As respondent states, from August 12th to August 22nd, petitioners were represented by Harry E. Gaylord, a court-appointed attorney. That Gaylord's replacement was well warranted is evidenced by the fact that he forewent the opportunity to object to the grand jury upon which no Negro had served prior to this case, and at which time one Negro was present thereon, facts which raised the gravest constitutional questions, and which a conscientious defense attorney was duty-bound to protest.

Gaylord did not object to the composition of the petit jury panel, though this was obviously unconstitutional nor did he move for a change of venue. Petitioners do not submit that adequate defense counsel must be omniscient, but he at least owes his client the duty of presenting such grave questions, or some of them to the court. Gaylord did nothing. The National Association for the Advancement of Colored People did not request Mr. Gaylord to act

⁴ *Powell v. Alabama*, 287 U. S. 45; *Avery v. Alabama*, 308 U. S. 441.

as defense counsel, as respondents assert (Brief in Opposition, p. 14). The record shows that Franklin Williams in seeking defense counsel merely made inquiries concerning Gaylord's disposition towards acting as retained counsel (R. 384). What motivated the National Association for the Advancement of Colored People to consider Gaylord is here irrelevant in view of what he actually did. However, it may be suggested that in desperation the Association was forced to consider him, and did so in the hope that he might be more satisfactory if he worked in conjunction with its attorneys (should petitioners also desire them as counsel), who were not members of the Bar of the State of Florida. That he turned over the fruits of his prior work to retained defense counsel, as respondents assume (Brief in Opposition, p. 15), is nowhere indicated. In fact, the record points in a contrary direction. The relevant testimony of Alex Akerman, Jr., is as follows:

"I did not desire to act as defense counsel in this cause, and would only do so in the event it became apparent that no other attorney in the State would represent said defendants, and would exhaust every legal remedy available under the law for their defense. I have not since my employment had the opportunity to inquire into the summoning, empaneling and qualification or disqualification of the grand jury by which this indictment was returned. If I am to properly represent these defendants I consider it my duty to make a complete and thorough investigation into all of the matters and thus discharge my duty without having to file hasty and dilatory motions which may or may not be proven. That is all." (R. 378.)

It may here be noted that as of August 25th, Mr. Akerman had not even been furnished with a copy of the indictment (R. 400). If one chooses to index Mr. Gaylord's adequacy by the opinion of others, it may be noted that Mr.

Gaylord's representation was so unsatisfactory to petitioners that they had Mr. Williams spend approximately two weeks in an effort to secure satisfactory counsel.

This short period of time for the preparation of the case was further curtailed by a hurricane which struck Central Florida (R. 80). Portions of the remaining days were spent in argument and preparation therefor, and extended hearings on motions for continuance, for change of venue and a motion to quash the petit jury venire, none of which had been done by court-appointed counsel. "The time between August 24th and 29th, 1949, was largely consumed in the presentations to the trial court of the evidence in support of the motions . . ." (*Shepherd v. Florida*, op. cit., *supra*). The inaccessibility of petitioners to their counsel during this period, and a sixty (60) mile roundtrip daily journey to court for counsel (R. 136), in addition to one night session hearing on a motion (over petitioners' protest) further whittled away the little time available for preparation. The testimony prior to this evening session indicates the uncompromising dispatch with which the prosecution proceeded.

"Mr. Akerman: No further questions.

"That's all the newspapers we have. We have subpoenas out for others, but they are not here.

"Mr. Hunter: You have some other witnesses that are here?

"Mr. Akerman: Yes. I have seen them.

"The Court: Let's proceed with what we have got for a while longer.

"Mr. Akerman: If the Court please, I understood you to say we would adjourn.

"The Court: I meant you would continue with the newspapers and see what we are going to do.

"Mr. Akerman: Will you give me about a three minute recess, then?

"The Court: Yes sir. Give you 5 minutes.

"Mr. Akerman: If the Court please, at this time, it is 5:45 P.M. The defendants respectfully move for a recess upon the following grounds:

"1. That defense counsel are in Orlando, Florida, a distance of some 30 miles from the courtroom, and must drive back and forth every day, consuming a considerable portion of their time.

"2. The defense counsel are working night and day in the preparation of their defense in this case and have made arrangements to have witnesses brought in to discuss with them this case, tonight, in additional attempt on their part to prepare the law.

"3. That it is the usual custom to adjourn the Court at a reasonable hour (sic) and that the next witness to be called will, in all probability, take at least an hour and a half.

"Mr. Hunter: Your Honor, the State would like to see this case go ahead. We have got a great many witnesses here, summoned by the State. Just waiting on these men, here while they introduce and read newspaper articles, and we don't want to keep them away from their businesses other extra days.

"The Court: Proceed with the next witness." (R. 140.)

The few days remaining had to be utilized in preparing a defense against a charge traditionally difficult to defend in a community where the contacting and interviewing of witnesses was complicated by the intimidation of mob violence and by widespread antagonism against petitioners in the community (R. 383). Additional handicap inhered in the fact that petitioners' counsel were from New York City and Orlando, both distant from the place of the crime and the trial. Petitioners do not rely on any one of these facts, but submit that in combination they represented terrible obstacles to a defense attorney conscientiously attempting to represent his clients.

Respondent's brief in opposition to the petition for certiorari dwells on the fact that petitioners were represented by two attorneys in addition to Mr. Akerman. An examination of the record reveals that the motions and the hearings thereon were so time and labor consuming that they occupied about three times as much space in the record as the entire trial. In addition, it must be realized that one of those attorneys was from out of the state, and that there were three defendants to defend, the defense of each of whom involved entirely different sets of facts requiring analysis and investigation.

The extent to which petitioners' presentation at the trial was damaged by the refusal to continue, cannot be calculated. It is impossible to establish what a witness would say, if time to conduct an investigation to discover that witness is denied. Suffice to say, that in his verified amendment to the motion for continuance on August 29th, Attorney Akerman stated:

"That since the filing of the original Motion for Continuance your defendants have been advised of many purported facts, which, if introduced as evidence in the trial, would prove their innocence, but that in order to present said facts, a considerable time will be necessary for investigation and for the obtaining of witnesses to be brought into Court and to present said facts, that it will be impossible to thoroughly investigate such matters and obtain said witnesses at the time for their trial." (R. 35.)

Nevertheless the trial commenced on September 1st.

Under such circumstances, no attorney could prepare an adequate defense within the time allotted. Any competent attorney was duty-bound to request a continuance, which would furnish the time necessary to prepare a case in-

volving life and death, with the adequacy which the due process clause of the United States Constitution requires. The right to counsel is not a mere form. It embodies the right to the assistance which counsel can furnish after preparation. It is denied if adequate time to prepare a case is not available as was the case here.

In *Powell v. Alabama* (op. cit., *supra*), the Court held:

"... Continuances are frequently granted for unnecessarily long periods of time, and delays incident to the disposition of motions for new trial and hearings upon appeal have come in many cases to be a distinct reproach to the administration of justice. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob." (at p. 59)

No valid justification has been offered for proceeding over the objections of petitioners' counsel. A possible reason may be found in the testimony of Mrs. Mabel Reese and in similar testimony: Editor and owner of three newspapers which circulate in Lake County, she testified that the State's attorney, Hunter, stated to her that the trial would be held as speedily as possible in order to end mass demonstrations in Groveland (R. 102).

The Denial of Petitioners' Motions for Change of Venue and the Denial of Their Motion for a Continuance Violated the Due Process Clause of the Fourteenth Amendment in That Petitioners Were Compelled to Undergo a Trial Dominated by Passion and Prejudice Contrary to the Rule of *Moore v. Dempsey*, 261 U. S. 36.

The rationale of *Moore v. Dempsey*, 261 U. S. 86, which requires that a defendant be afforded a trial free from mob domination can usually be satisfied in only one of two ways, should such an atmosphere exist where and when the trial is scheduled. Either the time or the place of trial must be changed. When the record discloses that Negroes' homes were burned (R. 90-92, 95, 197), Negroes evacuated from the community (R. 91, 94, 97, 154), a Negro shot and killed (R. 22), that armed mobs became a menace too great for normal law enforcement and that the National Guard was called to keep law and order (R. 98, 108, 110-111); that newspapers printed inflammatory stories, cartoons and editorials (R. 64-79 *passim*); then passion and prejudice have reached a stage from which they should be permitted to subside by the passage of time before holding a trial for the crime which precipitated the outbreaks, in the area where they occurred.

Respondents, in their brief in opposition, attempt to establish that the violence and attendant passion were isolated from the trial by space and by time. They assert that all the violence occurred within an area about five miles square (*Brief in Opposition*, p. 18) and state that "by the time of the arraignment on August 12th, the whole of Lake County was so quiet and peaceable that the petitioners remained there until the trial on September 1st; without the slightest untoward incident being revealed by the record." (*ibid.*, 21) These claims of geographical in-

sulation are refuted by the fact that almost all of the population centers of Lake County are within thirty miles of the Groveland-Mascotte area (Map, U. S. Department of Interior Geological Survey of State of Florida), a negligible distance in that type of country. In addition, the inflammatory newspaper publicity reached into every corner of the County and beyond, being read by every member of the panel (R. 207-375 *passim*).

This prejudicial atmosphere had not subsided by the time of trial. The fact that defendants could be safely imprisoned within the County is the slightest evidence of a healthy attitude. Witness the court's special order compelling the search of persons and property entering the courtroom (R. 10), continuous newspaper publicity (R. 64-79 *passim*), and such comments as: "It might be a good idea to keep on walking" (R. 154). This Court has recognized that violence is not so easily replaced by calm. See *Milk Wagon Drivers Union v. Meadquemoor Dairies, Inc.*, 312 U. S. 287, in which the court stated:

" . . . In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful . . . "

In *Moore v. Dempsey*, (op. cit. *supra*) the Court held the proceedings so infected community and mob anti-Negro prejudice, that they were termed a "mask." Mr. Justice Holmes wrote for the Court:

" . . . But if the case is that the whole proceeding is a mask—that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the state courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this court from securing to the petitioners their constitutional rights." (at p. 91)

Under the conditions described in point "B" of the Argument above, when the motion for continuance was denied, the motion for change of venue offered the only method by which petitioners could have been tried free from the prejudice of Lake County of that time.

After the refusal of a continuance, the denial of a change of venue for these petitioners in that community at that time was a denial of due process in itself.

It may here be noted that the Supreme Court of Florida attempts to explain away the violence by stating that "The inflamed public sentiment was against the crime . . . rather than defendants' race," (*Shepherd v. Florida*, op. cit. supra at p. 883) but nowhere explains why such sentiment manifested itself against members of petitioners' race rather than against the crime.

This Court in determining whether a given procedure satisfies the due process clause has found it appropriate to inquire into English common law. Goebel, *Constitutional History and Constitutional Law*, 38 CLR 555; *Murray v. Hoboken*, 18 Howard 272, 276 (1856); *Hurtado v. California*, 110 U. S. 516 (1883); *Ownbey v. Morgan*, 256 U. S. 94 (1921); *Powell v. Alabama*, supra; *United States v. Wood*, 299 U. S. 123, 134 (1936); *Green v. Briggs*, 1 Curtis 311, 335 (C. C. 1852); *Vanhorne v. Dorrance*, 2 Dall. 304 (1795); Dowling, *Cases on American Constitutional Law* (1937) 632. The common law is clear. In cases both civil and criminal, at the behest of either plaintiff or defendant, when it appeared that a fair trial could not be had because of prejudice in the community, the trial was removed to another county.

In Tidd's Practice (Ninth Edition 1820) at p. 605, the author states:

"When a fair and impartial trial cannot be had in the county where the venue is laid the courts on affidavit of the circumstances will change it . . ."

Similarly, in I Bacons Abridgment (T. & J. W. Johnson & Co. Edition 1860-76) at page 83, it is stated:

“ . . . They will move it into some other county, when it appears from the circumstances laid before them, that there is a probable ground to apprehend that a fair, impartial, or at least a satisfactory trial cannot be had where it is laid . . . ”

In case after case this was done usually by writ of certiorari or by motion to enter a suggestion on the roll: *The King v. Harris, Alderman of Gloucester, et al.*, S.C. 3 Burr. 1330; 1 Black W. 379; 96 E.R. 213 (1762); *Mylock v. Saladine*, S.C. 3 Burr. 1564; 1 Black W. 481; 96 E.R. 278; *R. v. Burnaby*, (1723) 8 Mod. Rep. 146; 88 E.R. 110; *R. v. Lewis* (1726) Sess. Cas. K.B. 90; 2 Stra. 704; 93 E.R. 91; *The King v. Fawle*, 2 Ld. Raym. 1452; 92 E.R. 445 (1726); *R. v. Orme and Nutt*, 1 Ld. Raym. 486, 91 E.R. 1224. In *Mylock v. Saladine*, supra, Lord Mansfield set forth the common law practice and detailed some of the reasons therefor:

“I have no doubt of the propriety of changing the venue, where an indifferent trial cannot be had, nor of the power of this Court to change it when such a case appears. A juror should be as white paper, and know neither plaintiff nor defendant, but judge of the issue merely as an abstract proposition upon the evidence produced before him. He should be superior even to a suspicion of partiality . . . If the prejudice be general, though not universal, it is sufficient to warrant this rule. It is impossible for the defendant to come at particular facts, so as to form a case for a legal challenge. Here is no universal accusation of the citizens of Chester; only a well-grounded apprehension of danger arising from the general prejudice.”

The common law right is also referred to in the leading New York case of *People v. MacLaughlin*, 150 N. Y. 365, 376 (1896).

But the law has imbedded itself into American jurisprudence as common law, but by widespread acceptance, it is a firm principle of Anglo-American law, and its violation by state law or the interpretation of a state law by state courts violates the due process clause of the Federal Constitution.

Although any of the errors listed above requires a reversal, their multiplication certainly calls for a new trial at which petitioners can obtain the protection of due process.

When defendants are tried before an unconstitutionally constituted jury at a time when counsel has not adequately prepared their defense, in a community inflamed by passion, then the trial is, in the words of Mr. Justice Holmes, "a mask." The outcome, under such circumstances, is inevitable.

Conclusion

Wherefore, it is respectfully submitted that the judgment of the Court below should be reversed.

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CONSTANCE BAKER TUDMAN,

JACK GREENBERG,

Of Counsel.

Dated, February 12, 1951.

² See as small sample, 15 Code of Ala. (1940) § 237; 41 Ariz. Code Anno. (1939) § 1206; Penal Code of California (1940) § 1932; 111 Gen. Stat. Conn. (1949 Revision) § 5341; Va. Stat. Supp. (1943) § 52.02; 2 Ga. Code Ann. (1948) § 4906.

BLACK, J.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

420

No. 189, Miscellaneous

SAMUEL SHEPHERD and WALTER IRVIN,
PETITIONERS,

v.

THE STATE OF FLORIDA,
RESPONDENT.

**BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA**

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INDEX

Subject Index

	PAGE
Opinions of the Court Below	1
Statement of the Case	2-6
Questions Involved	6
Argument	7-23
Question One	7-13
Question Two	13-18
Question Three	18-23
Conclusion	24

TABLE OF AUTHORITIES

Cases Cited:

Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692	9
Patton v. Mississippi, 332 U. S. 463, 92 L. Ed. 76	9-10, 12
Cassell v. Texas, 94 L. Ed. 563, (Advance Sheet)	10-11
Neal v. Delaware, 103 U. S. 370, 26 L. Ed. 567	12
Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074	12
Fay v. New York, 332 U. S. 261, 91 L. Ed. 2043	13
Powell v. Alabama, 287 U. S. 45, 77 L. Ed. 158	18

Textbooks Cited:

Annotation: 82 L. Ed. 1064	13
----------------------------------	----

Statutes Cited:

Florida Statutes, 1949:

Section 40.01	7-8
Section 40.01(3)	8
Section 40.07(3)	8
U. S. C. 28, Sec. 1257	2

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida is reported
in 46 So. 2d 880.

Said opinion, and the order denying the petitioners'
motion for rehearing, appear at pages 880 and 897 of the
record.

JURISDICTION

The petitioners seek to invoke the jurisdiction of this Court under 28 U. S. C. Section 1257, upon the claim that they were denied the guaranties of the Fourteenth Amendment because the jury was chosen according to a system of racial proportional representation; and upon the claim that, in being denied a continuance, they were denied the adequate assistance of counsel; and upon the claim that the denial of their motions for change of venue and for continuance compelled them to undergo a trial dominated by passion and prejudice.

STATEMENT OF THE CASE

The crime was committed in Lake County, Florida, in the nighttime, during the early hours of July 16, 1949.

The petitioner Shepherd lived about two miles from Groveland (R. 785), which is in the southern part of Lake County. The petitioner Irvin lived in Groveland. (R. 804) They were placed in the Lake County jail on July 16th.

On the same day, the Circuit Judge ordered that the petitioners be removed to another county for safe-keeping. (R. 32)

The non-appealing defendant Greenlee was arrested at Groveland at about 3:15 to 3:30 A. M. on July 16th and was placed in the city jail. Later in the day, he was carried to the county jail to get him away from a threatening crowd at Groveland. (R. 820-824).

On July 18th, the Circuit Judge ordered Greenlee removed to another county for safe-keeping. (R. 33)

Within two or three days, a mob, or mobs, had burned the Shepherd home near Groveland. Such mob, or mobs, also burned two houses belonging to a negro voodoo doctor by the name of George Valree, who was resented by negroes and whites alike. (R. 234-235, 389)

The National Guard was called out and reached Groveland at about 10:30 P. M. on July 17th. Finding no one unruly, the guardsmen left at about 1:30 A. M. (R. 251-252)

The night of July 18th, the National Guard was again called out and went to Mascotte, about three miles from Groveland. The guardsmen arrived at Mascotte about 11:30 P. M. and, finding no evidence of violence there, left at about 12:15 and went to Groveland, where they stayed until about 2:30 A. M. and, everything being quiet there, went on home. (R. 251-254)

On July 19th, the 116th Field Artillery was called out from Tampa (R. 254) and stayed at Groveland, Mascotte, and Clermont [not in the trouble area, R. 238, 262] until the following Sunday, July 24th. (R. 238). The indictment was returned on July 22nd (R. 29) at the county seat, Tavares, which is some 25 to 30 miles from where the troops were posted in the trouble area.

Incidentally, although the Clerk of the Circuit Court testified that he didn't recall that any negro had served on previous grand juries for 21 years (R. 360), the petitioners' pleadings admitted that one negro had served on the grand jury that indicted them (R. 71).

The white people, in order to protect the negroes, removed them from the trouble area, which embraced an area about five miles square (R. 231) and included Mascotte and Sturkey's Still (R. 236-237), as well as Groveland.

Considerable newspaper publicity was given the matter. Most of the newspaper articles appeared during the period between July 16th and August 1st. A scattered few appeared at about the time of the arraignment on August 12th and thereafter until about August 25th. (R. 914-952)

There never was any excitement or ill feeling toward negroes at any place except in the small trouble area, which embraced an area about five miles square. (R. 231-232)

Race relations were in no way strained in the remainder of the county, where there was no excitement and where the two races were on friendly terms, as usual.

By the time of the trial, the case was no longer a topic of conversation in the county, and had all died out except for the last day or so when the trial date approached. (R. 238-240)

The petitioners were arraigned on August 12th. (R. 38) They were returned from Raiford to Lake County for the arraignment and they thereafter remained in Lake County. (R. 175-176)

The Circuit Judge promulgated special rules to govern the trial. (R. 43-45)

Before arraignment on August 12th, the trial court appointed Attorney Harry E. Gaylord to defend the petitioners. (R. 9)

At the time of said arraignment, defense counsel Gaylord agreed that the trial be set for August 29th, and it was accordingly set for that date. (R. 40-41)

Attorney Franklin H. Williams, employed by the National Association for the Advancement of Colored People

(R. 847), had come to Florida and begun an investigation on July 31st (R. 851).

Attorney Williams asked Attorney Gaylord if the latter was willing to be employed by the Association or by the defendants themselves. Gaylord declined such employment and told Williams that he would defend the case only as a court appointed lawyer, but would act in that capacity to the best of his ability. (R. 216) Then Williams obtained Attorney Akerman's services (R. 216-217) on August 22nd (R. 849).

On August 25th, Akerman, Price, and Williams appeared in court as defense counsel (R. 14), and the Court appointed counsel, Gaylord, was permitted to retire from the case (R. 15).

On August 25th, the trial date was changed from August 29th to September 1st. (R. 15)

The County Commissioners selected the jurors from the registered voters in the County, in the proportions that the numbers of negro registered voters and white registered voters bore to the total number of registered voters. (R. 353-355)

There were 14,182 registered voters in the county, of which 13,380 were whites and 802 were negroes. (R. 351)

The 1945 Florida State Census showed that in 1945 there were 18,085 people of voting age in the county, of which 13,567 were whites and 4,518 were negroes.

Eighty-one jurors were examined on voir dire in order to get a trial jury, (R. 401-637)

As soon as the voir dire examination of a juror disclosed that he lived in the trouble area, about five miles square

as stated above, out he went by agreement, despite the fact that, if he had been examined further, it might have developed that he was a qualified juror in all respects. (R. 401-637)

The petitioners were found guilty without recommendation to mercy. Their codefendant Greenlee was also found guilty, but mercy was recommended for him. (R., unnumbered page between page 25, and page 26)

QUESTIONS INVOLVED

The questions presented are as follows:

1. WAS THE JURY CHOSEN IN FURTHERANCE OF AN ADMITTED POLICY OF SELECTING JURORS ACCORDING TO A SYSTEM OF RACIAL PROPORTIONAL REPRESENTATION AND OF LIMITING THE NUMBERS OF NEGROES SERVING ON JURIES IN VIOLATION OF THE GUARANTIES OF THE FOURTEENTH AMENDMENT?
2. WERE THE PETITIONERS, IN BEING DENIED A CONTINUANCE, DENIED THE ADEQUATE ASSISTANCE OF COUNSEL?
3. DID THE DENIAL OF THE PETITIONERS' MOTION FOR CHANGE OF VENUE AND THE DENIAL OF THEIR MOTION FOR A CONTINUANCE VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BY COMPELLING THE PETITIONERS TO UNDERGO A TRIAL DOMINATED BY PASSION AND PREJUDICE?

III.**ARGUMENT.****QUESTION ONE.**

WAS THE JURY CHOSEN IN FURTHERANCE OF AN ADMITTED POLICY OF SELECTING JURORS ACCORDING TO AN ADMITTED POLICY OF SELECTING JURORS ACCORDING TO A SYSTEM OF RACIAL PROPORTIONAL REPRESENTATION AND OF LIMITING THE NUMBER OF NEGROES SERVING ON JURIES IN VIOLATION OF THE GUARANTIES OF THE FOURTEENTH AMENDMENT?

The jurors were selected from the registered voters of the County. There were 14,182 registered voters, of which 13,380 were whites and 802 were negroes. According to the 1945 State Census, there were 18,085 people of voting age in the County, of which 13,567 were whites and 4,518 were negroes.

Prior to the 1949 amendment of Section 40.01, Florida Statutes, only male persons were eligible for jury service. In 1949, Section 40.01 was amended so as to cause Subsection One thereof to read as follows:

“Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months; provided however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list.”

There is nothing in the record to indicate that, prior to the drawing of the jurors involved in this case, any woman had registered for jury duty pursuant to said Section 40.01 as amended in 1949.

The statutes of Florida do not specifically require that jurors be registered voters. However, Section 40.01(3), Florida Statutes, as last enacted in 1949, commands that:

"In the selection of jury lists only such persons as the selecting officers know, or have reason to believe, are law abiding citizens of approved integrity, good character, sound judgment and intelligence, and who are not physically or mentally infirm, shall be selected for jury duty."

And Section 40.07(3), Florida Statutes, commands that:

"BY INFIRMITY.—No person not of sound mind and discretion shall be qualified to be a juror."
(Emphasis supplied).

Therefore, the County Commissioners who selected the jurors were required by these statutes to select only persons who possessed sound judgment and intelligence and discretion. This justified the exclusion of persons, white and black, who exhibited their lack of these qualities by failing to register to vote.

The County Commissioners selected the jurors. The reason given by the Chairman of the Board of County Commissioners for selecting jurors from among the registered voters only was, "We select the jurors from the registered voters in the county as we feel that those who are not registered would not have a sufficient interest in our county to serve on the jury" (R. 353); and that, "We don't feel that the others are qualified to serve on jury if they do not have sufficient interest to register and partici-

pate in our government affairs. *That's true both of white and colored*" (R. 355). (Emphasis supplied).

The reason thus given for selecting jurors from the registered voters was a lawful one. The County Commissioners did not abuse their discretion when they, in effect, determined that people who did not even bother to register to vote showed themselves so lacking in appreciation of their duties and responsibilities as citizens, and so lacking in interest in the affairs of their government, as to evidence that they were not citizens of sound judgment, intelligence and discretion. People cannot rightly be regarded as possessed of sound judgment, intelligence and discretion when they display completely opposite characteristics by turning their backs upon their citizenship duties and responsibilities and failing to qualify themselves to vote by registering.

Here, we point out that the record is devoid of any suggestion that anything prevented either negroes or whites from registering as voters, except their own indifference to their duties and responsibilities as citizens.

As was said by this Court in *Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692:

"The mere fact of inequality in the number selected does not in itself show discrimination. *A purpose to discriminate must be present* which may be proven by systematic exclusion of eligible jurymen of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination." (Emphasis supplied).

And the discrimination must be solely because of race, as appears from the following quotation from *Patton v. Mississippi*, 332 U. S. 463, 92 L. Ed. 76:

"Sixty-seven years ago this Court held that state exclusion of Negroes from grand and petit juries *solely because of their race* denied Negro defendants in criminal cases the equal protection of the laws required by the Fourteenth Amendment. *Strauder v. West Virginia*, 100 US 303, 25 L. Ed. 664 (1880). A long and unbroken line of our decisions since then has reiterated that principle, regardless of whether the discrimination was embodied in statute or was apparent from the administrative practices of state jury selection officials, and regardless of whether the system for depriving defendants of their rights was 'ingenious or ingenuous.'" (Emphasis supplied).

In the case at bar there was not only no purpose to discriminate against negroes solely because of their race, but there was no discrimination against negroes at all. In selecting jurors from among the registered voters, negroes and whites were treated alike. Neither negroes nor whites were selected unless they were registered to vote. An unregistered white man had no more chance of being selected than an unregistered negro had. The rule which was applied worked both ways. Certain it is that there was no discrimination which was purposeful and which was solely because of race.

The jurors were selected from the registered voters so that each race was proportionally represented, that is to say, the number of each race selected for jury duty was in the proportion that the number of registered voters of that race bore to the total number of registered voters.

The petitioners contend that this proportional representation of races on the jury violated the Fourteenth Amendment. They rely upon *Cassell v. Texas*, 94 L. Ed. 563 (Advance Sheet).

We are not unmindful of what was said in the several.

opinions in the Cassell case with regard to proportional representation. However, the decision in the case was placed upon other grounds and, while what was said with regard to proportional representation may be persuasive, we do not think that it forecloses the point and we submit that it should now be held that proportional representation does not violate the Fourteenth Amendment.

To hold that jurors cannot be selected upon the basis of proportional representation of races would be to place jury commissioners and county commissioners in an impossible situation in the South.

In Mr. Justice Reed's opinion in the Cassell case, concurred in by the Chief Justice and by Mr. Justice Black and Mr. Justice Clark, it was said:

"An accused is entitled to have charges against him considered by a jury in the selection of which there has been *neither inclusion nor exclusion because of race.*" (Emphasis supplied).

In Mr. Justice Frankfurter's opinion in the Cassell case, concurred in by Mr. Justice Burton and Mr. Justice Minton, it was said:

"*The basis of selection cannot consciously take color into consideration.*" (Emphasis supplied).

By and large, the jury commissioners and county commissioners in the South have gracefully accepted, and in good faith are attempting to comply with, the decisions of the courts that negroes must not be discriminated against in the selection of jurors. Certainly that is true of Florida.

However, jury commissioners and county commissioners are mere mortals, endowed with no superhuman powers, and they cannot do that which is impossible for them to

accomplish, not even under the spur of judicial fiat. The historical background of the South being what it is, and human nature being what it is, it is an utter impossibility for the average jury commissioner or county commissioner to select any negroes at all for jury service unless he consciously takes color into consideration and selects negroes because they are negroes. The realities being what they are, it is impossible for him to select any negroes for jury service unless he makes up his mind that he must, and will, be fair to the negroes in selecting jurors, and unless he consciously selects negroes because they are negroes.

If the average jury commissioner or county commissioner does not consciously select negroes on the basis of race, because they are negroes and because the law forbids discrimination against negroes, the result will be that, with rare exceptions, no negroes at all will be selected for jury service.

The inevitable result will be that, within a few years, the charge can fairly be made that there has been a systematic exclusion of negroes, and the courts will sustain the charge and hold that the negroes have been unconstitutionally discriminated against, under the authority of such cases as *Neal v. Delaware*, 103 U. S. 370, 26 L. Ed. 567, *Norris v. Alabama*, 294 U. S. 587, 79 L. Ed. 1074, and *Patton v. Mississippi*, 332 U. S. 463, 92 L. Ed. 76.

The only possible way to avoid having juries invalidated for systematic exclusion of negroes is to do the only thing which is within the power of jury commissioners or county commissioners to accomplish, that is, to determinedly and consciously select a fair proportion of negroes as jurors because they are negroes and because the negro race is entitled to a fair proportion of jurors.

The only method by which this can be done is to select upon the basis of proportional representation. Proportional

representation is just as fair to the negroes as it is to the whites. It discriminates against neither. It gives both equitable treatment. It is not discrimination against a group to give it its fair share of whatever is to be shared by several groups, whether jurors or not.

An accused cannot complain of discrimination against any race or group unless he is a member of it, and the only right the petitioners have to raise the question is based upon the fact that they are negroes. (See Annotation: 82 L. Ed. 1064; also see discussion of this point in *Fay v. New York*, 332 U. S. 261, 287, 91 L. Ed. 2043, 2059). So far as the record shows, there are no colors in Lake County except white and black. If there be citizens of any other color, the petitioners are not entitled to champion their cause; they must do that for themselves. The petitioners may champion only the cause of the negroes.

We submit that in the South selection of jurors on the basis of proportional representation is the only method that is humanly possible, practicable, and fair to both races; and that such a system of selection should not be invalidated with the result of leaving jury commissioners and county commissioners without any method of selecting jurors which is at the same time lawful, humanly possible for them to follow, and fair to both races.

QUESTION TWO.

WERE THE PETITIONERS, IN BEING DENIED A CONTINUANCE, DENIED THE ADEQUATE ASSISTANCE OF COUNSEL?

The trial began on September 1st. The petitioners had counsel from August 12th until September 1st, which was plenty of time to prepare for trial.

Before arraignment on August 12th, the trial court appointed Attorney Harry E. Gaylord to defend the petitioners, and the trial was set for August 29th pursuant to his agreement that it be set for that day.

There is nothing in the record to impugn Attorney Gaylord's ability as a lawyer, or his devotion to the cause which had become his by virtue of his appointment by the court.

Nevertheless, the National Association for the Advancement of Colored People, acting through its attorney, Franklin H. Williams, got into the case and requested Attorney Akerman to represent the petitioners. The result was that Akerman accepted the case on August 22nd. (R. 849) On August 25th, Attorneys Akerman, Price and Williams appeared in court as defense counsel. (R. 14) Whereupon, Gaylord was permitted to withdraw from the case. (R. 15)

However, it was not because of any supposed incompetency or lack of devotion to duty on Gaylord's part that the Association was moved to employ Akerman to represent the petitioners. In fact, the Association thought highly of Gaylord, as is evidenced by the fact that its representative, Attorney Williams, asked Gaylord if he was willing to be employed by the Association or by the defendants themselves. It was only when Gaylord declined such employment but told Williams that he would defend the case as a court appointed lawyer to the best of his ability, that the Association by-passed Gaylord and obtained Akerman's services. (R. 216). So, it is crystal clear that the Association did not consider that there was any incompetency or delinquency on Gaylord's part, and that the only reason the Association had for getting other counsel was that Gaylord, although willing, ready, and able to properly defend the petitioners, insisted on doing so only

in the capacity of court appointed attorney and was unwilling to be employed by outside sources.

It is apparent, therefore, that the petitioners had the services of competent counsel from the date Gaylord was appointed on August 12th, and not merely from the time Akerman accepted the case on August 22nd.

It is to be presumed that Gaylord exercised due diligence in working on the case between the time of his appointment on August 12th and the time Akerman was employed on August 22nd, and that Akerman and his associates availed themselves of what Gaylord knew about the case.

As a matter of fact, the Association's said Attorney, Williams, who appeared in court as associate defense counsel on August 25th, had begun his investigation of the case on July 31st. (R. 851)

Even if Williams had not begun investigating the case on July 31st, and even if Gaylord had not been representing the petitioners from August 12th until Akerman took over, and even if the petitioners had had no counsel at all before Akerman's employment on August 22nd, we submit that Akerman, Price and Williams had plenty of time between August 22nd and September 1st in which to prepare for trial.

It is true that Akerman was engaged in preparing motions and attending hearings thereon during a good part of the time between his employment and the trial. It is also true that, in Orlando, in Orange County, which adjoins Lake County, there was a tropical disturbance on two days, with quite a bit of wind which did quite a bit of damage. (R. 214) However, we find nothing in the record to indicate that this tropical disturbance extended to and

affected Lake County to such an extent as to prevent defense counsel from pursuing any investigation they wished to make there.

Although Akerman devoted a good deal of his time to preparing and presenting motions, the defense had two other lawyers, Price and Williams, who it must be assumed, were competent. Akerman and the Association wouldn't have had them if they had not been competent. Akerman carried the burden in the hearings on the motions. It does not appear that there was anything to prevent Price and Williams from utilizing their time to investigate and work on the case.

And it is not to be forgotten that the petitioners were right there in Lake County from August 12th on, available for any and all consultations and conferences which defense counsel desired to have with them.

As to witnesses, we find no proof in the record that any possible witness wasn't available right there in Lake County. The petitioners never claimed that any alibi witness existed, or that any witness existed and was not available who knew anything at all about the crime, about the petitioners' movements on the night of the crime, or about any other fact relevant to the case.

The only possible witnesses who might not have been readily available were the negroes who lived in the small trouble area and who were moved out for their own protection by responsible white people of the community. These negroes might have testified about the burning of the three houses and about the other disturbance in the trouble area. However, there is no showing in the record but that all of these negroes had returned to their homes long before the trial. Further, the State's witnesses estab-

lished every pertinent fact that these negroes could have proved, such as that the disturbance occurred in the trouble area, that the three houses were burned, and that the National Guard was called out. We again call attention to the fact that the disturbance had died down soon after the commission of the crime, and that there never was any disturbance or excitement anywhere except in the small trouble area.

As to jurors, defense counsel had ample time to investigate their qualifications. The first venire of 150 jurors was drawn on August 19th. (R. 11) There were no other jurors to investigate when the petitioners filed their motion for continuance on August 25th because the second venire of 50 jurors was not drawn until September 1st. (R. 21) Said second venire of 50 jurors was never used because the first venire of 150 jurors was not exhausted before a trial jury was selected from the first 81 veniremen examined on voir dire.

Gaylord was attorney for the petitioners from seven days before the time the first venire of 150 jurors was drawn on August 19th until he withdrew on August 25th, and it is fairly to be presumed that he already knew, or had investigated and found out, whether these 150 veniremen had any prejudice or other disqualification, and that he fully acquainted Mr. Akerman and his associates with all that he knew and had found out about these veniremen. Also, Associate Counsel Price and Williams had plenty of time to investigate these 150 prospective jurors, even during the time that Akerman was preparing his motions and attending hearings thereon.

On top of all that, the record discloses that defense counsel were in no way handicapped in trying the case. At the trial, they put forward every witness and every scrap of

evidence that they intimated was in existence in favor of the petitioners. They handled the case ably, so ably, in fact, that they succeeded in obtaining a recommendation of mercy for the younger Greenlee, even though the evidence showed him to be equally guilty with the petitioners.

There is no dispute about the law being that an accused is entitled to a reasonable time to advise with counsel and prepare his defense. The facts in this case show that the petitioners had sufficient time for that purpose. The facts in *Powell v. Alabama*, 287 U. S. 45, 77 L. Ed. 158, upon which the petitioners rely, are so different from those in the case at bar that the *Powell* case cannot rightly afford any comfort to the petitioners herein.

QUESTION THREE

DID THE DENIAL OF THE PETITIONERS' MOTION FOR CHANGE OF VENUE AND THE DENIAL OF THEIR MOTION FOR A CONTINUANCE VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BY COMPELLING THE PETITIONERS TO UNDERGO A TRIAL DOMINATED BY PASSION AND PREJUDICE?

The petitioners contend that, after the refusal of a continuance, the denial of a change of venue was a denial of due process. We submit that this contention is not well founded.

There never was any excitement or any ill feeling toward negroes at any place except in the trouble area, which was about five miles square. The petitioners' own witness, Powers, a newspaper man, so testified. (R. 231-232; 238-240)

The record shows that race relations were in no way strained in the remainder of the county, where things went on as usual, where there was no excitement, trouble or friction, and where the two races were on the friendliest terms, as usual, throughout the time involved.

The petitioners' newspaper man witness, Powers, testified that he covered all of Lake County; that he found no great feeling of prejudice against the colored race in any other parts of the county; that there was no general feeling against colored people; that the rape case was no longer a topic of conversation in the county, and had all died out except for the last day or so when the trial date approached. (R. 238-240)

The petitioners' newspaper woman witness, Mrs. Reese, who came from Ohio not more than two and a half years before, testified that she was acquainted with conditions around Mt. Dora; that there was more satisfaction among the negroes there than in the industrial North; that the relations of the negroes with the whites around Mt. Dora were good; that she found no prejudice there against the colored race; and that Mt. Dora was not affected by the so-called rioting in the south end of the county. (R. 249-250)

The petitioners' newspaper man witness Morrow testified that at Clermont, some 6½ or 7 miles from Groveland, there was no rioting and that everything was peaceable there. (R. 262)

The petitioners' newspaper man witness Mullins testified that the relationship between the negroes and whites in Eustis was very good; and that there was no hysteria, prejudice or ill feeling in Eustis or any other place that he went. (R. 273-274)

The petitioners' witness Grant, another newspaper man,

testified that everything was normal in the county except in that particular territory around Groveland, with no prejudice against the negroes and with the feeling between the races very good. (R. 285)

In addition, the testimony of the State's witnesses showed that in the rest of the county the relations between the races were good; that there was no hysteria, prejudice or ill feeling; that things went on as usual; and that a fair and impartial jury could be obtained in the county. [See testimony of Ware, a Leesburg banker (R. 301, et seq.); Rogers, another Leesburg banker (R. 308, et seq.); Miller, a construction man who was mayor of Leesburg (R. 319, et seq.); White, a Mt. Dora banker (R. 326, et seq.); Burley, Mayor of Tavares (R. 334, et seq.); Hampton, a Leesburg *negro* life insurance agent (R. 341, et seq.); Prevatt, a Tavares business man (R. 345, et seq.); and Portland, a Mt. Dora Banker (R. 362, et seq.)].

It is interesting to note that Hampton, the *negro* life insurance agent, said that he was State representative of his company; that he had traveled from Key West to Pensacola, missing only two towns in the whole of Florida; and that he found the relationship between the negroes and whites in Leesburg to be the best in the State of Florida. (R. 342-343)

All that the petitioners put forward in opposition to this avalanche of testimony showing that there was no occasion for a change of venue were the ex parte affidavits of four persons attached to the application for removal, to the effect that they did not believe the defendants could receive a fair and impartial trial in the county because of ill feeling and prejudice (R. 87-90). The affiants gave no reason for the belief thus asserted by them. The affiants were not presented in court as witnesses, and were there-

fore not subject to cross-examination to determine whether they had any factual basis for such a belief. Each of the four affidavits was made in Lake County, and the record reveals no reason why the affiants could not have been presented as witnesses if the petitioners had wished them to testify and be subjected to cross-examination.

As we have indicated, everything quieted down in the trouble area within a few days after the crime was committed on July 16th.

It was admitted on August 29th, by the petitioners' amendments to their application for removal, that the petitioners were returned from Raiford to Lake County for arraignment and had remained in Lake County ever since (R. 175-176). The arraignment was on August 12th. (R. 38-41). So, by the time of the arraignment on August 12th, the whole of Lake County was so quiet and peaceable that the petitioners remained there until the trial on September 1st, without the slightest untoward incident being revealed by the record. (If there had been any, the petitioners would undoubtedly have alleged and proved it).

When all of these facts are considered, it is apparent that the trial judge did not palpably, or otherwise, abuse his discretion in denying the application for removal.

Further, only 81 jurors were examined on voir dire in order to get a trial jury. The following tabulation based on the record (R. 401-637) shows what happened to these 81 jurors:

Peremptorily challenged by Greenlee	10
Peremptorily challenged by Shepherd	10
Peremptorily challenged by Irvin	10
Peremptorily challenged by State	10

Excused because of having opinion	12
Excused by agreement of State and defense solely because they lived in trouble area	13
Excused for Cause:	
Because friend of prosecutrix's family	1
Because a State witness	1
Because related to State Attorney....	1
	—
	3
Excused by agreement because of death in family	1
Sworn to try case	12
	—
Total.....	81

As soon as the voir dire examination of a venireman disclosed that he lived in the trouble area, about 5 miles square, he was at once excused by agreement. As shown by the above table, thirteen veniremen were excused on that basis.

The ease with which a qualified jury was selected, and the paucity of veniremen with opinions as to the petitioners' guilt (only 12), but emphasized the correctness of the trial court's order denying a removal.

The fact that the jury recommended mercy for Greenlee, apparently because of his youth, although the proof showed that he was just as guilty as the others, *conclusively refuted any idea that the trial jurors had any prejudice* and bore out the trial jurors' testimony on voir dire that they had no prejudice. If the jurors had been prejudiced against negroes, they would not have recommended mercy for Greenlee.

It is true that the trial judge promulgated special rules to govern the trial. The reason given by the judge for establishing those rules was stated by him as follows (R. 44):

"I have every confidence that the citizens of Lake County will lend their aid and assistance to orderly and legal procedure to the end that complete justice may be accomplished in the trial set for August 29th in Tavares, Therefore the special rules promulgated for this trial are not to be taken or considered as any indication of fear or lack of confidence. The rules are promulgated as a precaution against the possibility of some agitator or agent being sent in to purposely start trouble to the end that the critics of the south might have something to base criticism upon."

The further you read into the record in this case, the more you become convinced that the reason thus given by the judge was actually what prompted the making of said special rules, and that there was actually no reason to fear any untoward incident on the part of the people of Lake County during the trial.

The record does not show that any untoward incident did occur during the trial, either inside or outside of the courtroom.

There is absolutely no basis for the petitioners' contention that their trial was dominated by passion and prejudice.

CONCLUSION

In conclusion, we respectfully submit that the petitioners' petition for writ of certiorari should be denied.

Respectfully submitted,

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